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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 137.

BUENAVENTURA UBARRI Y YRAMATEGUI,
PLAINTIFF IN ERROR,

vs.

JACINTO LORENZO LOPEZ LABORDE, MARIA CONSOLACION LOPEZ LABORDE, MANUEL DEMETRIO LOPEZ LABORDE, ET AL.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

FILED JULY 16, 1907.

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1 At a stated term of the District Court of the United States for Porto Rico, begun and held at San Juan, in said district, on the 8th day of April, in the year of our Lord one thousand nine hundred and seven, and in the one hundred and thirty-first year of the Independence of the United States of America—present, the Hon. Bernard S. Rodey, Judge—among the proceedings had was the rendition of a judgment on the 19th day of April, 1907, in the following entitled cause, to wit:

JACINTO LORENZO LOPEZ LABORDE, MARÍA CONSOLACIÓN LOPEZ LABORDE, MANUEL DEMETRIO LOPEZ LABORDE, ENRIQUE LOPEZ LABORDE, MARÍA CONCEPCIÓN GRAXIANA LOPEZ (by Her Grandmother, CONCEPCION LABORDE), FRANCISCA LUISA LOPEZ LABORDE

vs.

BUENAVENTURA UBARRI É YRAMATEGUI.

Be it remembered that heretofore, to wit, on the 6th day of June, 1906, came said plaintiffs by their attorneys Sweet, Rossy and Campillo and filed their complaint herein which is as follows, to wit:

Complaint.

At Law.

JACINTO LORENZO LOPEZ LABORDE, MARÍA CONSOLACION LOPEZ LABORDE, MANUEL DEMETRIO LOPEZ LABORDE, ENRIQUE LOPEZ LABORDE, MARÍA CONCEPCIÓN GRAXIANA LOPEZ (by Her Grandmother, CONCEPCION LABORDE)

vs.

FRANCISCA LUISA LOPEZ LABORDE, PABLO UBARRI YRAMATEGUI, RUFINO UBARRI YRAMATEGUI, JOSÉ MARÍA UBARRI YRAMATEGUI, VENTURA UBARRI YRAMATEGUI, MODESTA UBARRI YRAMATEGUI, as the Successors of PABLO UBARRI, Deceased.

2 The above named Plaintiffs complain and for cause of action allege:

I.

That the Plaintiffs Jacinto Lorenzo Lopez Laborde, María Consolación Lopez Laborde, Manuel Demetrio Lopez Laborde, Enrique Lopez Laborde, María Concepción Lopez Laborde, are citizens of Porto Rico, and that all of the above named Defendants except Francisca Luisa Lopez Laborde are subjects of the King of Spain residing as follows:

Rufino Ubarri at Puerta de Tierra, Porto Rico; Pablo Ubarri at the city of Barcelona, Spain; Ventura Ubarri at the city of Madrid, Spain; José María Ubarri at the city of San Juan, Porto Rico;

Modesta Ubarri at the city of Málaga, Spain; and Francisca Luisa Lopez Laborde in the Island of Porto Rico.

II.

That the above named Plaintiffs are all over the age of twenty-one (21) years, except María Concepción Graxiana Lopez, who is represented by her grandmother Concepción Laborde, her nearest of kin.

III.

That the Defendant Francisca Luisa Lopez Laborde is a sister to the above named Plaintiffs, but is made a party Defendant hereto, because she declines to be joined as a party Plaintiff, and Plaintiffs are informed and believe that she is a necessary party hereto.

IV.

That on the 7th day of November, 1884, Jacinto Lopez y Martinez, a citizen of Porto Rico, residing in the Municipality of Dorado, died without leaving a will; and that at the time of his death the said Jacinto Lopez y Martinez was the owner and possessor of the following described property, to wit:

A plantation known as San Antonio, consisting of 4,505 acres (cuerdas) with buildings thereon as hereinafter described, situated in the Municipal Districts of Dorado and Vega Alta; the tract thereof situated in the Vega Alta District was of about 168 acres (cuerdas). The 4237 acres in the Dorado District are situated in the Higuillar ward, and are divided in two tracts; one the main tract and upon which the buildings are situated, is composed of 3837 acres (cuerdas); and the other tract is composed of 400 acres (cuerdas). The tract of 3837 acres is bounded on the North by the Central Barbara Plantation, which belonged to the Succession of Francisco Garcia, and at the time is the property of Messrs. Piza Brothers; by the Santa Rita Plantation, belonging to Barbina García de Goicuria, by the property of Francisco Ayestaran, and by the sea. On the East by the Madre Vieja road and the Dorado River. On the South by the lands of Juan Barbino Marrero, Lucas Marrero, Eustaquio Lopez, Fermin Arrigoitia, and Andres and Gaspar Lopez. On the West by the boundary line of the Dorado and Vega Alta Districts, and by the San Vicente Central. Upon this tract of land were situated the following buildings; a dwelling house of wood and roofed with galvanized iron, shingles and bricks. A masonry house, wherein the engine, and the sugar machinery and other sugar apparatus are situated, besides, also, some machinery with which to saw lumber; three ranches for cane pulp, one of which is also used as a carpenter shop; a wooden structure roofed with brick. Another house, the lower part built of masonry and the upper part of wood; and another wooden house, roofed with palm leaves, near the shore. The other tract of 400 acres or cuerdas is bounded on the North by the property of Juan Barbino Marrero; on the South by the Santa Elena Plantation, of the Rijos Succession;

on the East by the property of Celestino Garcia, and José Segura; and on the West by the property of Jacinto Lopez Garcia.

Besides other personal property, Plaintiffs aver that the deceased Jacinto Lopez died possessed of about 1500 head of cattle, of the value of thirty-seven thousand five hundred (37,500.00) dollars.

4 V.

That the said estate was of the value of 123,077 Mexican Pesos, as appraised in the testamentary proceedings subsequent to the death of the said Jacinto Lopez; but the Plaintiffs aver the fact to be that the said estate was then actually worth the sum of about three hundred thousand pesos, and that the said appraised value of 123,077 pesos was a fraudulent estimate placed upon the value of said property by Pablo Ubarri Capetillo, or at the instance of said Ubarri, by the Appraisers, for the purpose of enabling said Ubarri to fraudulently obtain the ownership thereof, as will hereinafter be more fully recited and set forth.

That immediately after the death of the said Jacinto Lopez, the following abintestate proceedings were had, to wit: the judicial occupation; the declaration of the heirs by the court; cessation of the judicial occupation; the appointment of Pablo Ubarri administrator of the estate under power of attorney by Concepcion Laborde, the widow of deceased; the making of an inventory and appraisement of the estate; liquidation of the inheritance property; partition of the estate and adjudication to each heir of his portion or interest in the estate, and an apportionment to the widow of sufficient property for the payment of claims against the estate; approval of the Court to this act of partition; protocolization of the partition made; registration in the Registry of Property of the portion allotted to each one of the heirs, and of the property set aside and adjudicated to the widow Concepcion Laborde for the payment of debts, or claims against the estate.

VI.

That in these abintestate proceedings the heirs were represented by the Procurador, Tomás Caballero.

VII.

That by order of the Court on the 23rd of April, 1885, the
5 following named persons were declared to be the heirs of the said Jacinto Lopez, share and share alike, to wit: Nicolasa Trinidad Lopez García, Luisa Antonia Lopez Garcia, Francisca Luisa Lopez Laborde, Jacinto Lorenzo Lopez Laborde, María Concepción Lopez Laborde, Enrique Lopez Laborde, and Manuel Demetrio Lopez Laborde, and the estate of the said deceased was by order of the Court duly adjudicated and apportioned, as follows:

To the Widow for the Payment of Claims Against the Estate.

A House, the lower part brick, and the upper part wood, valued at	$1,200.00
An oven to make bricks	120.00
Two evaporadoras, Wetgel, of copper	700.00
A saw mill with its appurtenances	3,038.35
Four hogsheads of sugar	140.00
Ten acres of land in sugar cane	150.00
Four palm groves with 182 palm trees	364.00
One tract of first-class land of 120 acres, bounded on the North by the property of Trinidad Lopez; on the South by the country road, between Maracayo and Toa-Baja; on the East by the Dorado River; and on the West by the high road which passes by this town, of the value of $150.00 per acre	18,000.00
Another tract of land of six and a half acres, first-class, bounded on the North and East by Santa Barbara Plantation; on the South by the Property of Trinidad Lopez; and on the West by the Dorado high road, of the value of $150.00 per acre	975.00
Another tract made up of 1760 41/100 acres of 2nd, 3rd, 4th, and 5th class bounded on the North by the sea; on the South by Pedro Lopez, Juan Marrero, and Santa Barbara Plantation, and Carmen Plantation; on the East by the land of Pedro Mortorell, and the Plantation Santa Barbara and Santa Rita, the land of Enrique and Jacinto Lopez, and on the West by the plantations Ceiba and San Vicente, valued all according to the class, at	21,677.50
Another property of 668½ acres of 3rd class land, bounded on the North by Carmen Plantation, and the land of Juan Marrero, on the South by the Plantation Santa Elena; on the East by the land of Celestino García, José C. Carneiro and Bernardino Benitez, and on the West by the land of Maximo de los Santos; valued at $25 per acre	16,712.50
Total	$63,077.35

Share Apportioned to Antonia Lopez Garcia.

A washstand of marble	$6.00
A wardrobe	20.00
The image of San Antonio	20.00
A mule with her young one	45.00
A mare with her young one	30.00
A horse	30.00
A tract of land made up of 73 and 34/100 acres of second-class land, bounded on the North and East by the land of Jacinto Lopez Laborde; on the South by the land of the same party; the country road and the land of Lucas Marrero; and on the West by the land of Pedro Lopez, valued at $100 per acre	7,344.00
Total	$7,500.00

Share Apportioned to Trinidad Lopez Garcia.

	A walking stick, gold handle	$25.00
7	Four yoke of oxen	300.00
	A wooden house, roofed with shingles	300.00
Two horses		60.00
A tract of land made up of 45 and 65/100 acres of land, first-class, bounded on the North by the land adjudicated to Concepcion Laborde; on the South by the land of Jose Maria San Juan; on the East by the Dorado River; and on the West by the high road of this town; valued at $150.00 per acre		6,815.00
Total		$7,500.00

Share Apportioned to Jacinto Lopez y Laborde.

A gold watch and chain		$130.00
A barometer in bad condition		.50
Two drawings of Porto Rico		2.00
One desk chair		3.00
An old desk		8.00
Twenty chairs in bad condition		22.50
A piano in bad condition		80.00
Two double barreled guns		30.00
A revolver		6.00
A Remington rifle		16.00
A writing table		6.00
A book case		2.00
One iron bed		8.00
A marble washstand		4.00
Two wooden washstands		2.00
A wardrobe		20.00
Two old trunks		2.50
An old valise		1.50
Two cots		3.00
	One table	3.00
8	One pig	1.00
	Three clocks in bad condition	20.00
An old sideboard		2.00
A saddle		4.00
Six rocking chairs		24.00
Two sofas		10.00
The dwelling house appraised in the plantation Inventory		1,200.00
A ranch roofed with galvanized iron		160.00
A ranch roofed with shingles used as a carpenter shop		150.00
Another building used for storing pulp		70.00
Another building		100.00
A wooden house roofed with palm leaves		50.00

One oven to burn lime	120.00
Twelve old boilers	60.00
Eight pails	4.00
Two lamps	1.50
Eight pairs of cart wheels	80.00
Forty-one old tires	41.00
Six axles for carts	24.00
A buggy in bad condition	100.00
A sloop	4.00
Twelve empty hogsheads	12.00
A heap of old iron	25.00
Two horses	80.00
A tract of land made up of 164 and 92/100 acres of which 123 acres are of the 5th class, at $5.00 per acre, and the balance of the second class at $100 per acre, bounded on the North by land of Enrique, Manuel Consuelo and Concepcion Lopez, on the South by the country road Higuillar, and the property of Antonia Lopez, on the East by the high road of Dorado, and on the West by the property of Antonia Lopez, and the land adjudicated to Concepcion Lopez	$4,807.50
Total	$7,500.00

Share Apportioned to Luisa Lopez Laborde.

An iron bed	8.00
Twelve knives and twelve forks of silver	30.00
A mare	30.00
A horse	30.00
A share in the main office building of the plantation	1,600.00
A portion of the machinery and other appurtenances thereof	1,815.00
A tract of land made up of 39 and 86/100 acres, second-class, bounded on the North by the Santa Barbara Plantation; on the South by the property of Concepción Lopez; on the East by the Dorado road; and on the West by the property of Consuelo Lopez; valued at $100 per acre	3,986.00
Total	$7,500.00

Share Apportioned to Concepcion Lopez Laborde.

An iron bed	8.00
A saddle	4.00
Kitchen utensils	4.00
Twenty four silver spoons	48.00
A mare	30.00

A horse	30.00
A share in the main office building	1,600.00
A portion of the machinery and appurtenances thereof.	1,815.00
A tract of land made up of 39 and 60/100 acres, second class, bounded on the North by the property of Luisa Lopez, on the South by the property of Jacinto Lopez, on the East by the high road of Dorado, and on the West by the property of Consuelo Lopez, valued at $100 per acre	$3,960.00
Total	$7,500.00

Share Apportioned to Consuelo Lopez Laborde.

An iron bed	8.00
A three lights lamp	10.00
A marble washstand	6.00
A wardrope	60.00
A marble bureau	6.00
A saddle	4.00
An image of Jesus	20.00
Four spittoons	1.00
A mule	20.00
A mule and her colt	45.00
A mare	30.00
A horse	30.00
A share in the main office building of the plantation	1,600.00
A portion of the machinery and other appurtenances thereof	1,815.80
A tract of land made up of 38 and 84/100 acres of second class land, bounded on the North by the Santa Barbara Plantation, on the South by the property of Jacinto Lopez, on the East by the property of Luisa and Concepción Lopez and on the West by the property of Manuel Lopez, valued at $100 per acre	3,884.20
Total	$7,500.00

Share Apportioned to Manuel Lopez Laborde.

An iron bed	8.00
Three gold frames	1.00
A wardrobe	20.00
A dining room table	20.00
A sideboard	2.00
A yoke of oxen	75.00
Two mares	60.00
One horse	30.00
A share in the main plantation building	1,600.00
A portion in the machinery and appurtenances thereof.	1,815.80

A tract of land made up of 38 and 68/100 acres of second class land, bounded on the North by the Santa Barbara Plantation, on the South by the property of Jacinto Lopez, on the East by the property of Consuelo Lopez, and on the West by that of Enrique Lopez, valued at $100 per acre	3,868.20
Total	$7,500.00

Share Apportioned to Enrique Lopez Laborde.

An iron bed	8.00
Two pine tables	1.00
A filter	1.00
A yoke of oxen	75.00
A mare	30.00
Two horses	60.00
A share in the main building of the plantation	1,600.00
A portion of the building and appurtenances thereof	1,815.00
A tract of land made up of 39 and 9/100 acres of second class land bounded on the North by the Santa Barbara Plantation; on the South by the property of Jacinto Lopez; on the East by that of Manuel Lopez, and on the West by the land adjudicated to Concepcion Laborde, valued at $100.00 per acre	3,909.20
Total	$7,500.00

12 (N. B.) If in the future new property should turn up belonging to the Succession, or the property divided should have less, the increase or diminution shall be made in the amount apportioned to each one of the heirs, in the same proportion that has served as basis for the present division. Porto Rico, July 1, 1886. Francisco de P. Acuña.

VIII.

That the accountant and divider of the deceased's estate was the lawyer Francisco de P. Acuña; and the guardian *ad litem* of the minors was Julian Matienzo; the representative of the widow was Pablo Ubarri y Capetillo, substituted by Tomas Cabillero, his Attorney in fact.

IX.

That in the intestate proceedings had the following accounts or claims were set forth as against the deceased's estates:

Luisa Antonia Lopez for the balance of her share in her mother's estate and other claims	$1,188.00
Pablo Ubarri	24,000.00
Ricarda Hernandez	5,000.00
Santiago Echeveste	3,325.00
José Pons	2,160.00

	Leopoldo Vazquez Prada	1,701.80
	Quintin Guardiola	1,000.00
	Andres Girona	400.00
	Successors of Dorado	150.00
	Salduondo y Valle	168.00
	José Rodriguez	143.00
	Font y Roselló	112.53
	Ahumada y Company	51.20
	Viuda de Echevarria y Co.	50.78
	Melon y Company	10.98
13	Elizaldo y Guerrero	$25.65
	Joaquin Peña	13.00
	Cándido Hernandez	39.73
	Forteza Hermanos	25.70
	Pedro Cordova	246.33
	José Brustenga	25.00
	Guillermo Rubert	50.00
	Dr. Larregui	80.00
	Luis Aguilar	82.00
	Total	$40,848.30

That all these claims or debts, if due at all, should have been paid by the widow of said Jacinto Lopez from the portion of the deceased's estate set apart for the payment of said claims.

X.

The widow of the said Jacinto Lopez, who had by the terms of the division of the said estate, become the trustee for all of the creditors of said estate, and held property with which to pay said debts, believed, or averred, that the said debt claimed by the said Pablo Ubarri y Capetillo was not valid, and therefore she refused to pay the same.

That upon the refusal of the widow of the said Jacinto Lopez to pay and discharge the claim set up by the said Ubarri, the latter brought an action against the succession of the said Jacinto Lopez, which included the Plaintiffs, who were at the time of said action was brought, each one of them, under the age of twenty-one (21) years, and the said Ubarri brought said action against the widow of said Lopez as representatives of the said minor heirs, notwithstanding the fact that sufficient property had been allotted to the widow for the payment of all claims and debts against the deceased's estate, and that the said Ubarri had accepted said assignment in
14 settlement of his own claim, by his direct intervention in the testamentary proceedings, and notwithstanding the opposition of interest existing between the mother and the children by the former refusing to pay a debt which the children were willing to allow; and plaintiffs further allege that upon the refusal of said widow to allow said demand, and the bringing of said action, the said Pablo Ubarri wrote said widow that he would not show her the details of said account, but that if forced to do so, he would bring

it to the court; and he would regret to see her children left destitute, said Ubarri meaning that he would make said family suffer if they disregarded his wishes.

XI.

That during the progress of Ubarri's said action against the Succession for the collection of his claim, and before a decision had been rendered, the following tracts of land were attached by the municipality of Dorado for the payment of taxes for the years 1885, 1886, and 1887, as follows: for the payment of $948.18 (Mexican) as taxes, and $66.37 as costs, 200 acres of land of the 5th class, which was part of San Antonio Plantation, situated in Higuillar ward, bounded on the North by land which formerly belonged to the Succession; on the East by land of Enrique Lopez y Laborde; on the South by land belonging to said Concepcion Laborde; and on the West by the estate known as Central San Vicente, which land is detached from the 2760 acres and which had been set apart for the payment of debts against said estate, adjudicated to Concepción Laborde, and registered in her name, and in the Register of Property. This land was appraised by experts appointed by the Municipality of Dorado at $10.00 per acre.

A tract of land belonging to Jacinto Lopez y Laborde to pay $97.82 taxes and $6.84 costs, 25 acres of land of the 5th class were attached in the Higuillar ward, bounded on the North by the land of Concepcion Laborde; on the East by land of the said Jacinto Lopez, attached by the State; on the South by the road of Higuillar, on the West by land belonging to Jacinto Lopez, which land was detached from the 164.94 cuerdas adjudicated to him, and which are registered in his name in the Registry of Property. This land was appraised at $20.00 per acre.

A tract of land belonging to Maria Concepcion Laborde, for the payment of $31.36 taxes and 19 cents costs, there were attached 10 acres of 3rd class land, situated in Higuillar ward, and bounded on the North by the land of Francisco Lopez y Laborde, on the East by other land of Maria Concepcion Lopez Laborde; on the South by land of Jacinto Lopez; and on the West by land of said María Concepcion Lopez Laborde, which parcel is detached from the 39.60 acres which were apportioned to her, and are registered in her name in the Registry of Property. This land was appraised at $20.00 per acre.

Francisca Luisa Lopez for the payment of taxes of $31.17 and $2.18 as costs, there were attached 10 cuerdas of 2nd class land, situated in Higuillar ward, bounded on the North by land belonging to Francisca Luisa Lopez; on the East by the Dorado military road; on the South by land belonging to said Francisca Luisa Lopez; which land was detached from the 39.86 cuerdas that was adjudicated to her, and on the West by land belonging to Consuelo Lopez. This land was appraised at $40.00 per acre.

Maria Consuelo Lopez, to collect $30.56 taxes and $2.14 costs, there were attached 10 acres of 2nd class land situated *on* the Higuillar ward, bounded on the North by land belonging to Maria Con-

suelo Lopez, on the East by the land of Francisca Luisa Lopez, on the South by the land of the said Consuelo Lopez, and on the West by other land belonging to Manuel Lopez Laborde, which land was detached from the 38.54 acres that were adjudicated to her, and are registered in her name in the Register of Property. This land was appraised at $40.00 per acre.

Manuel Lopez y Laborde, for the payment of $30.45 taxes and $2.13 costs, there were attached 10 acres of land of 2nd class, situated in the Higuillar ward, and bounded on the North by land belonging to Manuel Lopez; on the East by land of Maria Consuelo Lopez; on the South by land of said Manuel Lopez; and on the West by the land of Enrique Lopez which parcel was detached from the 38.42 acres that were adjudicated to him and registered in his name. This land was appraised at $40.00 per acre.

Enrique Lopez Laborde, for the payment of $31.42 for taxes and $2.19 costs, there were attached 10 acres of land, situated in the Higuillar ward, bounded on the North by land belonging to Enrique Lopez; on the East by the property of Manuel Lopez, on the South by land belonging to said Enrique Lopez, and on the west by land of Concepción Laborde, which parcel was detached of the 39.09 acres that were adjudicated to him, and are registered in his name. This land was appraised at $40.00 per acre.

XI.

The Plaintiffs further aver that all of the lands sold for taxes as above set forth by the Municipality of Dorado, were directly or indirectly purchased by and adjudicated to said Pablo Ubarri; that all such proceedings were had during the pendency of his said action against the said Succession of Jacinto Lopez, during which time also said Ubarri was acting as the attorney in fact of Concepción Laborde, the said widow of Lopez; and that because of his great wealth and influential position, the said Pablo Ubarri was in position to dictate and control the actions and conduct of said municipality in all of the steps taken and essential to the assessment, sale of property, and the adjudication thereof to the purchaser, and that he did so direct and control the same. And Plaintiffs further allege that the said sale of property for taxes as above set forth was made at a price greatly below the value thereof, and that said sale and adjudication of property thereunder was made under the inspiration and direction of said Pablo Ubarri, and was in accordance with his definitely formed purpose to acquire said property himself, and to acquire all of the property of said estate as intimated in his letter to said Concepcion Laborde at the time he stated to her that if she did not pay his demand her family might be left homeless. Plaintiffs further aver that the entire amount of said taxes was in the aggregate the sum of 1,078.00 Mexican dollars; That said Pablo Ubarri purchased said property as aforesaid at a mere nominal price, even as compared with what the same was appraised by the said Municipality of Dorado, and that said appraisement was only nominal in comparison with the appraisement made by the testamentary appraisers, which last

appraisement was also made far below the actual value of
17 the property in accordance with the instructions of said Ubarri

XIII.

Plaintiffs further aver that in substance and in fact, during the entire testamentary proceedings covering the partition of the property, the appraisement of the same, protocolization of the different insterests as divided, said Ubarri always acted not only for himself, but also was in full charge and control, through his agents or attorney, of all of the property involved in said estate.

XIV.

That he was able to do these things by reason of the fact that at all the times in this complaint set forth, he was the general attorney in fact for the said Concepcion Laborde, with power to do all things in connection with said estate, and also with the power of substitution, and that under these powers he appointed Tomás Caballero as his substitute attorney in fact for said widow, and caused to be appointed his nephew, Julian Matienzo, as guardian for the heirs of said Jacinto Lopez; that he caused and directed the *the* appointment of the appraisers and designated who they should be, and that his attorney, Francisco de P. Acuña, was the divider of the property, and that the said Ubarri controlled each and every detail on all sides in connection with said estate and the litigation in connection therewith, except the employment of Lopez Landrón to defend said Concepcion Laborde in the action brought against her by the said Ubarri for the collection of his said alleged claim.

Plaintiffs further aver that at the time of the commencement of this action against the Succession of said Jacinto Lopez, the said Ubarri caused to be levied upon said property an attachment of the same, by virtue of which the said property ceased to be productive for any purpose whatever; and because of said attachment, no funds could be realized with which to pay taxes, nor with which to support the family of the said deceased Jacinto Lopez, and in connection with said attachment proceedings, plaintiffs further aver
18 that the attorney of said Concepcion Laborde moved that said attachment be dissolved; and thereupon said Concepcion Laborde, believing that said attachment was dissolved ordered that some wood be cut and sold from the estate Monte Rey, situated in the jurisdiction of Vega-Alta, for the purpose of supplying her family with the necessities of life; and that thereupon the said Ubarri caused the arrest of said Concepcion Laborde, because of the cutting of said wood, and although upon the statement being made in Court as above set forth the said Concepcion Laborde was acquitted of any wrong intent in the premises, and the prosecution dismissed; yet the said Ubarri prosecuted an appeal to the Supreme Court of Porto Rico, wherein the judgment of the lower court was reversed and Concepsion Laborde was fined in the sum of 140 pesos, and sentenced to be committed to jail in the event said fine was not paid; and Plaintiffs further aver in connection with said proceedings that said Concepcion Laborde was in ill health at the time

the said sentence was given, and that the court was petitioned to suspend or modify the said sentence of imprisonment because the said Concepcion Laborde was unable to pay the fine, but that said Ubarri demanded that she be sent to jail, whereupon, her son, Jacinto Lopez, succeeded in borrowing the amount of said fine and paying the same into court in satisfaction of said judgment; but that later the said money was returned to said Concepcion Laborde upon the receipt of a Royal Order from Spain, granting full pardon to the said Concepcion Laborde.

XVI.

Plaintiffs further aver with a view of more clearly showing the relation of said Ubarri to the Succession of Jacinto Lopez and the relations of various persons appointed to transact the business in connection therewith, to said Ubarri, that the said Tomas Caballero was his confidential business agent, especially in dealing with legal matters; That the said Julian Matienzo, appointed under the direction of Ubarri as the guardian of the minor children of said Jacinto Lopez, during the testamentary proceedings, was
19 a confidential clerk and agent of said Ubarri; That the said divider who partitioned said estate, Francisco de P. Acuña, was the leading counsel for said Ubarri in the transactions of important legal matters; That the appraisers appointed to value said estate for the testamentary proceedings were appointed and named by direction of said Ubarri; That the municipal officers of the Municipality of Dorado aided and abetted said Ubarri in his efforts to gain control of said property through tax sale and that always his agent was present to look after a purchase of said land for the amount of said taxes, although no bid was ever made for the same, but on the contrary no bidders were ever present to make offers for said property until such times as it would be lawful to declare said property sold for the amount of the tax, and that by such methods all of the property taxed was finally adjudicated to said Ubarri as a part of his design and purpose to acquire the entire estate.

XVII.

Plaintiffs further allege that the said estate, that is to say, all of the said real estate, in all more than 4,000 acres, besides personal property, was in the year 1889, adjudged to said Pablo Ubarri in payment of his alleged debt of 17,000 dollars and interest amounting in all as fixed by the appraisers to 24,000 Mexican dollars.

XVIII.

That at the time of his death the said Jacinto Lopez owned as a part of his estate horses and cattle of great value, to wit: about the sum of $35,000, which formed a portion of the total value of said estate, and said live stock with some fifty head of horses, was disposed of under the direction of said Ubarri, except about four thousand dollars' worth, which were sold to pay debts of said Jacinto Lopez, deceased.

XIX.

Plaintiffs aver that at the time of the death of said Jacinto
20 Lopez his said estate was of the value of 300,000 Mexican Pesos, and that by the manipulations herein set forth on the part of said Pablo Ubarri, which were fraudulent as against these Plaintiffs, the said fraud consisting of the complete and successful control and direction of al- persons whatsoever connected with the liquidation of said estate, the said Ubarri damaged, cheated, and defrauded the said estate, and especially these plaintiffs, out of the sum of 275,000 Mexican dollars.

XX.

That the said sum of 275,000 Mexican dollars, was in the year 1889 equivalent to the sum of $156,750.00, lawful money of the United States.

XXI.

Plaintiffs further allege that all of said property has been sold and disposed of by said Ubarri, or his succession, as far as these plaintiffs are advised, without knowledge on the part of the purchasers of said estate of the fraudulent transactions of said Ubarri in connection therewith.

Wherefore Plaintiffs demand judgment against the said Succession of Pablo Ubarri for the sum of one hundred and fifty-six thousand, seven hundred and fifty ($156,750.00) dollars, lawful money of the United States, together with interest thereon at the rate of 6% per annum from the — day of ——, 1889, until the rendition of judgment herein.

WILLIS SWEET AND
GUILLERMETY,
Attorneys for Plaintiffs.

MUNICIPALITY OF SAN JUAN,
Island of Porto Rico, United States of America, ss:

Jacinto Lopez being first duly sworn deposes and says: I am one of the Plaintiffs named in the foregoing action. I have read the complaint herein and know the contents therein set forth.
21 and that the same is true of my own knowledge, except as to matters and things therein set forth upon information and belief, and as to those matters and things, I believe it to be true.

J. LOPEZ LABORDE.

Sworn and subscribed to before me this 5th day of June, 1906
[NOTARIAL SEAL.] CRUZ CASTRO.

22 *Summons.*

(Filed June 11, 1906.)

No. 386.

JACINTO LORENZO LOPEZ LABORDE ET AL.
vs.
FRANCISCA LUISA LOPEZ LABORDE ET AL.

UNITED STATES OF AMERICA,
District of Porto Rico, ss:

The President of the United States of America, Greeting, to Francisca Luisa Lopez Laborde, Pablo Ubarri Yramategui, Rufino Ubarri Yramategui, José Maria Ubarri Yramategui, Ventura Ubarri Yramategui, and Modesta Ubarri Yramategui, as the Successors of Pablo Ubarri, deceased:

You are hereby notified that there has been filed in the Clerk's Office of the District Court of the United States for Porto Rico a certain complaint by the above named plaintiff against you in which they allege that they are the heirs of Jacinto Lopez y Martinez, of Dorado, P. R., deceased; that you are the successors or heirs of Pablo Ubarri Capetillo, deceased, except Francisca Luisa Lopez Laborde who is a necessary party to this suit but refuses to be joined as party plaintiff; that said Jacinto Lopez died intestate in 1884, and at the time of his death was the owner of some 4,505 acres of real estate situate in the municipal districts of Dorado and Vega Alta, as also a large amount of personal property, all of which properties were worth the sum of 300,000 pesos; that under certain *ab intestate* proceedings had after the death of said Jacinto Lopez said Pablo Ubarri Capetillo was appointed administrator of said estate under power of attorney of Concepcion Laborde, widow of said Lopez; that said Pablo Ubarri fraudulently caused said estate to be appraised at 123,077 pesos; that said Ubarri had a claim against said estate of 24,000 pesos; that as administrator aforesaid substituted by his power of attorney Tomas Caballero, and on account of his
23 great wealth and influential position in said municipality & Island of Porto Rico he cheated and defrauded said estate and them of 275,000 pesos or $156,750.00, wherefore they demand judgment for said amount with interest at 6% from the — day of —— 1889.

You are hereby required to appear and answer said complaint within ten (10) days from the date of the service hereof, otherwise the plaintiff will apply to the Court for the relief demanded in the complaint.

Witness the Hon. Chas. F. McKenna, Judge of the District Court of the United States for Porto Rico, and the Seal thereof at San Juan, this 6th day of June A. D. 1906, and in the 130th year of the Independence of the United States of America.

Attest:

H. H. SCOVILLE, *Clerk*,
By A. M. BACON, *Deputy*.

[Seal of the U. S. District Court for Porto Rico.]

Marshal's Return.

(Filed June 11, 1906.)

THE DISTRICT OF PORTO RICO, *ss:*

I hereby certify and return, that on the seventh day of June, 1906 I received the within Writ and that after diligent search, I am unable to find the within named defendants Pablo Ubarri, Modesta Ubarri & Ventura Ubarri within my district.

H. S. HUBBARD,
United States Marshal,
By JOHN L. HAAS,
Deputy United States Marshal.

Marshal's Return.

(Filed June 11, 1906.)

UNITED STATES OF AMERICA,
The District of Porto Rico, ss:

I hereby certify and return that I have served the annexed writ on the therein-named Rufino Ubarri Yramategui by hand-
24 /ing to and leaving a true and correct copy thereof with him personally at San Juan, P. R. in said District on the 8th day of June, A. D., 1906.

H. S. HUBBARD,
U. S. Marshal,
By JOHN L. HAAS, *Deputy.*

Marshal's Return.

(Filed June 11, 1906.)

UNITED STATES OF AMERICA,
The District of Porto Rico, ss:

I hereby certify and return that I have served the annexed Writ on the there-named José Maria Ubarri by handing to and leaving a true and correct copy thereof together with a copy of the complaint with him personally, at San Juan in said District on the 7th day of June A. D., 1906.

H. S. HUBBARD,
U. S. Marshal
JOHN L. HAAS, *Deputy.*

Marshal's Return.

(Filed June 11, 1906.)

UNITED STATES OF AMERICA,
The District of Porto Rico, ss:

I hereby certify and return that I have served the annexed Writ on the therein-named Francisca Luisa Lopez Laborde by handing to and leaving a true and correct copy thereof with her personally at San Juan in said District on the 7th day of June, A. D. 1906.

H. S. HUBBARD,
U. S. Marshal.
JOHN L. HAAS, *Depaty.*

25 *Journal Entry.*

June 16, 1906.

JACINTO LOPRENZO LOPEZ LABORDE ET AL.
vs.
FRANCISCA LUISA LOPEZ LABORDE ET AL.

Now comes Francisca Lopez Laborde, one of the defendants herein, by her attorneys Henry F. Hord and Wm. H. Hawkins, and files an answer.

26 *Separate Answer of Defendant Francisca Luisa Lopez Laborde.*

(Filed June 16, 1906.)

JACINTO LORENZO LOPEZ LABORDE ET AL.
vs.
FRANCISCA LUISA LOPEZ LABORDE ET AL.

The defendant Francisca Luisa Lopez Laborde, answering the complaint herein, says:

I. That this defendant believes the various matters and things alleged in the complaint herein to be true so far as her information and belief extend and that this defendant is willing to abide such judgment as may be given in this cause provided that no costs are taxed against this defendant.

San Juan, Porto Rico, June 15th, 1906.

HENRY F. HORD,
WM. H. HAWKINS,
Attorneys for Defendant Francisca Luisa Lopez Laborde.

Verification waived.
WILLIS SWEET,
Att'y for Plaintiffs.

Due service by copy this 16th day of June, 1906.
WILLIS SWEET,
Att'y for Pl'ffs.

3—137

27 *Journal Entry.*

June 16, 1906.

JACINTO LORENZO LOPEZ *pez* LABORDE ET AL.
vs.
FRANCISCA LUISA LOPEZ LABORDE ET AL.

Now comes José María Ubarri Yramategui, one of the defendants herein, by his attorney Damian Monserrat, and files a separate demurrer to the complaint. Also comes Rufino Ubarri, another of the defendants herein, by his attorneys F. H. Dexter and Hilario Cuevillas, and files a stipulation allowing said defendant until the 30th instant to plead.

28 *Demurrer of José Maria Ubarri é Yramategui.*

(Filed June 16, 1906.)

Law. No. 386.

JACINTO LORENZO LOPEZ LABORDE ET AL.
vs.
FRANCISCA LUISA LOPEZ LABORDE ET AL.

Separate Demurrer of the Defendant Jose Maria Ubarri Yramategui.

The defendant José María Ubarri Yramategui, demurs to the complaint filed in this action and for cause of demurrer alleges:

I. That the complaint does not state facts sufficient to constitute a cause of action.

II. That complaint is ambiguous, unintelligible and uncertain.

Wherefore this defendant prays that the complaint be dismissed with costs.

DAMIÁN MONSERRAT,
Attorney for Defendant José María Ubarri Yramategui.

29 *Stipulation Allowing Defendant Rufino Ubarri Additional Time to Plead.*

(Filed June 16, 1906.)

JACINTO LORENZO LOPEZ LABORDE ET AL.
vs.
PABLO UBARRI YRAMATEGUI ET AL.

It is hereby stipulated and agreed by and between Willis Sweet, attorney for plaintiffs above named and Don Hilario Cuevillas and F. H. Dexter, attorneys for defendant Rufino Ubarri Yramategui,

that said defendant Rufino Ubarri Yramategui may have until June 30th, 1906, to plead herein.

San Juan, P. R., June 15, 1906.

WILLIS SWEET,
Attorney for Plaintiffs.
HILARIO CUEVILLAS,
F. H. DEXTER,
Attorneys for Defendant Rufino Ubarri Yramategui.

30 *Affidavit for Publication of Summons.*

(Filed June 29, 1906.)

At Law.

JACINTO LORENZO LOPEZ ET AL.
vs.
FRANCISCA LUISA LOPEZ LABORDE ET AL.

Jacinto Lopez Laborde, being first duly sworn, deposes and says as follows:

First. I am one of the parties in the above entitled action. The complaint in said action was duly filed with the Clerk of this Court on the sixth day of June, 1906, and summons thereupon issued. The said action is brought for the purpose of recovering damages against the defendants named therein as the succession of Pablo Ubarri, the said action for damages being based upon the al-eged wrongful and fraudulent acts of said Pablo Ubarri, since deceased, in the management of the affairs of the succession of Jacinto Lopez, deceased, the plaintiffs herein having been minor heirs of the said Jacinto Lopez at the time said wrongful and fraudulent acts in said complaint complained of were done and practiced; the result of said wrongful and fraudulent acts having been that the said Pablo Ubarri deprived the plaintiffs, by his said fraudulent acts and practices in the collection of an alleged debt against the estate of the said Jacinto Lopez, deceased, and in his management of said estate as the attorney in fact for the widow of said Jacinto Lopez deprived Plaintiffs of the greater portion of their just inheritance to the damage of these plaintiffs in the sum of One Hundred Fifty-six Thousand Seven Hundred and Fifty Dollars ($156,750.00), besides interest, and that having sold and disposed of the property of said Jacinto Lopez to the injury and damage of these plaintiffs as aforesaid, these plaintiffs bring this action for damages against the succession
31 of the said Pablo Ubarri for the said wrongful and fraudulent acts committed as in the said complaint set forth, and to which reference is hereby made.

Second. Affiant further states that the defendant Pablo Ubarri for several years last past has been a resident of the City of Barcelona, Kingdom of Spain, and that he is now residing in said city; that Ventura Ubarri is now a resident of and residing in the city of

Madrid, Kingdom of Spain; that Modesta Ubarri is a resident of the City of Málaga, Kingdom of Spain; and that the three defendants Pablo, Ventura and Modesta Ubarri are citizens of and residents in the Kingdom of Spain, at the respective cities above mentioned, and were so residing in said cities at the time the complaint in this action was filed.

Third. Affiant further states that a summons was duly issued out of this court, directed to the Marshal thereof, with instructions to serve the same, but that he has returned said summons to the Clerk of this Court with his return thereon endorsed to the effect that said defendants could not be found in his district. As to the other defendants named in this action, the return of said Marshal as aforesaid shows that said defendants were duly served within the jurisdiction of this court.

Fourth. I have fully and fairly stated the facts of this case to M. F. Rossy, and Willis Sweet of No. 34 San Francisco Street, in the City of San Juan, Porto Rico, my Counsel, and I am by them informed, and I verily believe that I have a good cause of action in this suit against the said defendants, as will fully appear by my verified complaint filed herein, to which reference is hereby made; and the said defendants Pablo Ubarri, Ventura Ubarri and Modesta Ubarri are necessary and proper parties defendant thereto, as I am advised by my counsel after said statement made as aforesaid, and as I verily believe.

32 Fifth. Affiant further states that all of the said defendants are the owners of real estate sufficient to satisfy the judgment asked for in the complaint herein, said real estate being within the jurisdiction of this court, and that said plaintiffs will at the time of filing this affidavit ask for an attachment thereof.

Sixth. Personal service of said summons cannot be made on the said defendants and I therefore demand an order that service of the same be made by publication.

J. LOPEZ LABORDE.

Subscribed and sworn to before me this 26th day of June, 1906.

H. H. SCOVILLE, *Clerk*.

33 *Order for Service of Summons by Publication.*

(Filed June 29, 1906.)

At Law.

JACINTO LORENZO LOPEZ LABORDE ET AL.

vs.

FRANCISCA LUISA LOPEZ LABORDE ET AL.

Upon reading and filing the affidavit of Jacinto Lopez, and it satisfactorily appearing therefrom to me, the Judge of the United States Court for the District of Porto Rico, that the defendants Pablo

Ubarri, Ventura Ubarri and Modesta Ubarri reside out of this territory or district and cannot, after due diligence, be found therein, and it appearing from the affidavit aforesaid that a cause of action exists in this action in favor of the plaintiffs therein and against the said defendants and that the said defendants Pablo Ubarri, Ventura Ubarri and Modesta Ubarri are necessary and proper parties defendant thereto; and it further appearing that a summons has been duly issued out of said court in this action and that the personal service of the same cannot be made upon the said defendants for the reasons hereinbefore contained and by the said affidavit made to appear:

Now, on motion of Willis Sweet, Attorney for the plaintiffs herein, it is ordered that the service of the summons in this action be made upon the defendants by a publication thereof in the Heraldo Español a newspaper published at the City of San Juan, Porto Rico, hereby designated as the newspaper most likely to give notice to said defendants; that such publication be made at least once a week for two months.

34 And that further, in like manner, it satisfactorily appearing to me that the residence of said defendants is known to be as follows: The said Pablo Ubarri in the City of Barcelona, Spain; the said Ventura Ubarri at the City of Madrid, Spain; and the said Modesta Ubarri at the City of Malaga, Spain, it is ordered that a copy of the summons and a copy of the complaint in this action be forthwith deposited in the Post Office, postpaid, directed to the said defendants at their respective places of residence.

Dated June 29, 1906.

B. S. RODEY,
Judge of the United States District Court for Porto Rico.

35 *Petition for Attachment.*

(Filed June 29, 1906.)

At Law.

JACINTO LORENZO LOPEZ LABORDE ET AL.
vs.
FRANCISCA LUISA LOPEZ LABORDE ET AL.

To the Honorable the above entitled Court:

Your petitioners respectfully show unto Your Honor as follows:

(1) That on the sixth day of June, 1906, they filed their complaint in the above entitled Court against the above named defendants, in which said plaintiffs demand judgment against said defendants in the sum of One Hundred Fifty-six Thousand Seven Hundred and Fifty Dollars ($156,750.00), besides interest, upon the following cause of action, to wit:

The said action is brought for the purpose of recovering damages against the defendants named therein as the succession of Pablo

Ubarri, the said action for damages being based upon the alleged wrongful and fraudulent acts of said Pablo Ubarri, since deceased, in the management of the affairs of the succession of Jacinto Lopez, deceased, the plaintiffs herein having been minor heirs of the said Jacinto Lopez at the time said wrongful and fraudulent acts in said complaint complained of were done and practiced, the result of the said wrongful and fraudulent acts having been that the said Pablo Ubarri deprived the plaintiffs by his said wrongful and fraudulent acts and practices in the collection of an alleged debt against the estate of the said Jacinto Lopez, deceased, and in his management of said estate as the attorney in fact for the widow of said Jacinto Lopez deprived plaintiff of the greater portion of their just inheritance to the damage of these plaintiffs in the sum of $156,-
36 750.00, besides interest, all as appears in the complaint filed herein, to which reference is hereby made.

(2) Your petitioners further represent that the said defendants Pablo Ubarri, Ventura Ubarri and Modesta Ubarri are non-residents of Porto Rico, and that they were non-residents at the time of the commencement of this action and for many years prior thereto, but that they are possessed of certain real estate hereinafter described, situated in the Island of Porto Rico, and all within the jurisdiction of this Honorable Court, all of said real estate being owned by the said defendants who are non-residents of Porto Rico, except certain interests in said real estate owned by Rufino Ubarri, one of the above named defendants, who is a resident of Porto Rico, the said interest of Rufino Ubarri being set forth in the description of the premises hereinafter given.

(3) Your petitioners respectfully submit to the Court a description of the property sought to be attached, as follows:

Property No. 61 named as "Quebrada Lajas," situated in the wards of Mediania Alta y Mediania Baja, of the town of Herrera y Ciénega Baja, places called Minuniñi, Pabon and Quebrada Baja, in this jurisdiction of Rio Grande and Loiza, composed of 2,002-57 acres. Bounded on the north by Don Ricardo Gallardo (his succession today), Cecilio Lopez, Manuel Galvarin, Matos Succession, Ciénega del Junco, Serapio Planellas, Vicente Monge, Juan Lopez, Lorenzo and Galo Casanova, Sandalio Quiñonez, Matias Allendes, Federico Lopez, and Matías Osorio; on the south by Andino Rescalh, the road, Eduardo Gonzalez, property of Gondian and Agustin Casals; on the east by lands of Ramon Villamil, Juan de Molfulleda, Antonio Escobar, Isidro Calderon; and on the west, part by the Herrera river, and the Succession of Ricardo Gallardo. This property is owned by Rufino and Pablo Ubarri, registered in book 2, page 68, record 1 and 2.

37 Property No. 730, folio 168 over, volume 17, is registered in the name of Buenaventura Ubarri, and situated at No. 34, San Francisco Street, in the city of San Juan, Porto Rico, and which description is as follows:

Property composed of 19 meters 10 centimeters front by 39 meters 40 centimeters deep or composed of an area of about 352 meters 50 square centimeters: bounded to the right with the house of German

Araujo, to the left by José Hernais, and on the back by rafael Palacios, Angel Navajas, Eustaquio Cabrera, Carmen Mecthler y Augusto Cotter.

Property No. 268, volume 6, folio 35. House No. 60. Sol Street, in the city of San Juan, Porto Rico. This is the property of Modesta Ubarri, and is bounded as follows:

To the right by Dolores Travieso; to the left by Tomas Parejo, and on the back by the Colegio de San Ildefonso.

Property No. 1244. Registered in folio 200, volume 30, record 2, described as follows:

Property composed of 21 areas 14 centiares with a two-story masonry house built on it, the property and the house are bounded as follows: On the north by Don José Esteban Saldaña; on the south with the road; on the east by Juan Asencio, and on the west by the road that leads to the Park. This is the property of Buenaventura Ubarri.

(4). Your petitioners further represent that at the time of making, and filing this petition or affidavit for an attachment, your petitioners file an affidavit and ask the Order of this Court for the publication of a summons directed to the said non-resident defendants, whose names and residences are in the said affidavit for publication fully set forth.

Wherefore your petitioners pray that the Clerk of this
38 Court be directed to issue a writ of attachment against the properties herein described and that Your Honor fix such terms as may be just upon which such attachment shall issue.

Dated this twenty-third day of June, 1906.

J. LOPEZ LABORDE.

Subscribed and sworn to before me this 26th day of June, 1906.

H. H. SCOVILLE, *Clerk.*

WILLIS SWEET,
Counsel for Plaintiffs.

Journal Entry.

June 29, 1906.

JACINTO LORENZO LOPEZ LABORDE ET AL.
vs.
FRANCISCA LUISA LOPEZ LABORDE ET AL.

Now come the plaintiffs herein by their attorney Willis Sweet and file a petition for an attachment, and said petition is granted, and attachment ordered to issue upon filing of proper bond in the sum of Two thousand Five Hundred dollars.

39 *Demurrer of Rufino Ubarri.*

(Filed June 30, 1906.)

JACINTO LORENZO LOPEZ LABORDE ET AL.
v.
PABLO UBARRI É YRAMATEGUI ET AL.

The defendant Rufino Ubarri herein, by his attorneys Hilario Cuevillas and F. H. Dexter, demurs to the complaint herein filed upon the following grounds, to wit:

I.

Because it appears upon the face of the said complaint that the cause of action is prescribed, no action or extra judicial claim having been made within one year prior to the institution of this suit, in accordance with the provisions of Section 1869 of the Civil Code.

II.

Because it appears upon the face of the said complaint that the cause of action is prescribed, no action or extra-judicial claim having been made within four years prior to the institution of this suit, in accordance with the provisions of Section 1043 of the Civil Code.

III.

Because it appears upon the face of the said complaint that the cause of action is prescribed, no action or extra-judicial claim having been made within six years prior to the institution of this suit, in accordance with the provisions of Sections 1856 and 1863 of the Civil Code.

IV.

Because it appears upon the face of the said complaint that the cause of action is prescribed, no action or extra-judicial claim having been made within fifteen years prior to the institution of this suit, in accordance with the provisions of Section 1865 of the Civil
40 Code.

V.

Because this court has no jurisdiction of the action, since it appears from the said complaint that the property alleged to have been acquired by Pablo Ubarri Capetillo was so acquired by him as the result of proceedings regularly carried on and judgment validly entered, which said judgments are not alleged to have been in any wise altered, modified or reversed; and for the further reason that the said proceedings and judgments referred to in said complaint have the force and effect of *res adjudicata* as to all matters and facts set forth by plaintiffs in their said complaint.

VI.

Because in so far as concerns the plaintiff María Concepción Graxiana Lopez it does not appear that her grandmother, Concep-

ción Laborde, is either her general guardian or her guardian *ad litem* the only persons who by the provisions of Article 56 of the Code of Civil Procedure have the right to represent her judicially.

VII.

Because the said complaint fails to state any cause of action under and by virtue of the laws of Porto Rico in favor of the plaintiffs herein.

VIII.

Because the complaint is ambiguous and uncertain in that it does not advise this defendant clearly as to the cause of action.

IX.

Because from the facts alleged in the complaint the relief, if any, to which plaintiffs may be entitled, is in equity and not at law.

Wherefore this defendant prays that as to him the said complaint be dismissed and that he be awarded his costs herein expended.

F. H. DEXTER,
Attorney for Defendant Rufino Ubarri.

41 *Journal Entry.*

July 23, 1906.

JACINTO LORENZO LOPEZ LABORDE ET AL.
vs.
SUCESORES DE PABLO UBARRI.

The hearing on the demurrer herein is passed until August 1, 1906.

42 *Suggestion as to the Jurisdiction of this Cause and the Parties Thereto.*

(Filed July 30, 1906.)

JACINTO LORENZO LOPEZ LABORDE ET AL.
vs.
FRANCISCA LUISA LOPEZ LABORDE ET AL.

Now comes defendant Rufino Ubarri Yramategui by his attorney, F. H. Dexter, and suggests to the court that according to the allegations of the complaint herein all of the plaintiffs are citizens and residents of Porto Rico and the defendant Francisca Luisa Lopez Laborde is also a citizen and resident of Porto Rico.

In view of the recent ruling of this court upon the question of jurisdiction in the case of Luis Ballecillo y Mandry, *et al.*, *v.* Juan Bertran *et al.*, in which this Court decided that it had no jurisdiction of a cause in which citizens and residents of Porto Rico were

parties plaintiff and defendant, this defendant prays the judgment of this court whether he shall further plead to this cause and if it shall retain jurisdiction thereof.

F. H. DEXTER,
Attorney for Defendant Rufino Ubarri.

43 *Journal Entry.*

July 30, 1906.

JACINTO LORENZO LOPEZ LABORDE ET AL.
vs.
FRANCISCA LUISA LOPEZ LABORDE ET AL.

Now comes the defendant Rufino Ubarri, by his attorney F. H. Dexter, and files a suggestion as to the jurisdiction of this Court and the parties thereto.

44 *Journal Entry.*

August 3, 1906.

JACINTO LORENZO LOPEZ LABORDE AT AL.
vs.
FRANCISCA LUISA LOPEZ LABORDE ET AL.

The demurrer of Rufino Ubarri, one of the defendants herein is heard and overruled. The plaintiffs are given until Monday the 6th instant to make certain amendments to their complaint.

45 *Journal Entry.*

August 13, 1906.

JACINTO LORENZO LOPEZ LABORDE ET AL.,
vs.
FRANCISCA LUISA LOPEZ LABORDE ET AL.

Now come the plaintiffs herein by their attorney Willis Sweet and file their amended complaint.

Complaint.

At Law.

JACINTO LORENZO LOPEZ LABORDE, MARIA CONSOLACIÓN LOPEZ LABORDE, MANUEL DEMETRIO LOPEZ LABORDE, ENRIQUE LOPEZ LABORDE, MARÍA CONCEPCIÓN GRAXIANA LOPEZ (by Her Grandmother, CONCEPCION LABORDE), FRANCISCA LUISA LOPEZ LABORDE,

vs.

PABLO UBARRI YRAMATEGUI, RUFINO UBARRI YRAMATEGUI, JOSÉ MARIA UBARRI YRAMATEGUI, BUENAVENTURA UBARRI YRAMATEGUI, MODESTA UBARRI YRAMATEGUI, as the Successors of PABLO UBARRI, Deceased.

Amended Complaint.

46 The above named Plaintiffs complain and for cause of action allege:

I.

That the Plaintiffs, Jacinto Lorenzo Lopez Laborde, María Consolación Lopez Laborde, Manuel Demetrio Lopez Laborde, Enrique Lopez Laborde, María Concepción Lopez Laborde, Francisca Luisa Lopez Laborde, and María Concepción Graxiana Lopez, are all citizens of Porto Rico, and that all of the above named Defendants are subjects of the King of Spain residing as follows:

Rufino Ubarri at Puerta Tierra, Porto Rico; Pablo Ubarri at the city of Barcelona, Spain; Buenaventura Ubarri at the city of Madrid, Spain; José María Ubarri at the city of San Juan, Porto Rico; and Modesta Ubarri at the city of Málaga, Spain.

The said Rufino Ubarri has resided in Porto Rico all of his life except about six years, to wit: From 1899 until the year 1895. The said Pablo Ubarri left Porto Rico, where he had previously resided in about the year 1899, and has since resided in Barcelona, Spain. Buenaventura Ubarri and Modesta Ubarri, have always resided in Spain. The other defendants are, and at all times have been, residents of Porto Rico.

II.

That the above named Plaintiffs are all over the age of twenty-one (21) years, except María Concepción Graxiana Lopez, who is represented by her grandmother, Concepción Laborde, her nearest of kin, but that at the time the matters and things herein complained of were transacted, done, and performed, said plaintiffs were, each and every of them, under the age of twenty-one years, except María Concepción Graxiana Lopez, aforesaid, who is at this time under the age of twenty-one years.

47 III.

That on the 7th day of November, 1884, Jacinto Lopez y Martinez, a citizen of Porto Rico, residing in the Municipality of Dorado, died

without leaving a will; and that at the time of his death the said Jacinto Lopez y Martinez was the owner and possessor of the following described property, to wit:

A plantation known as San Antonio, consisting of 4505 acres (cuerdas) with buildings thereon as hereinafter described, situated in the Municipal Districts of Dorado and Vega Alta; the tract thereof situated in the Dorado District was of about 368 acres (cuerdas). The 4237 acres in the Dorado District are situated in the Higuillar ward, and are divided in two tracts; one the main tract and upon which the buildings are situated, is composed of 3837 acres (cuerdas); and the other tract is composed of 400 acres (cuerdas). The tract of 3837 acres is bounded on the North by the Central Barbara Plantation, which belonged to the Succession of Francisco Garcia, and at this time is the property of Messrs. Piza Bros; by the Santa Rita Plantation, belonging to Barbina Garcia de Goicuria, by the property of Francisco Ayestaran, and by the sea. On the East by the Madre Vieja road, and the Dorado river. On the South by the lands of Juan Barbino Marrero, Lucas Marrero, Eustaquio Lopez, Fermín Arrigoitia, and Andres and Gaspar Lopez. On the West by the boundary line of the Dorado and Vega Alta Districts, and by the San Vicente Central. Upon this tract of land were situated the following buildings; a dwelling house of wood and roofed with galvanized iron, shingles and bricks. A masonry house, wherein the engine, and the sugar machinery and other sugar apparatus are situated, besides also, some machinery with which to saw lumber; three ranches for cane pulp, one of which is also used as a carpenter shop;
a wooden structure roofed with brick. Another house, the
48 lower part built of masonry and the upper part of wood; and
another wooden house, roofed with palm leaves, near the shore. The other tract of 400 acres or cuerdas is bounded on the North by the property of Juan Barbino Marrero; on the South by the Santa Elena Plantation, of the Rijos Succession; on the East by the property of Celestino García, and José Segura; and on the West by the property of Jacinto Lopez Garcia.

Besides other personal property, Plaintiffs aver that the deceased Jacinto Lopez died possessed of about 1500 head of cattle, of the value of thirty-seven thousand five hundred ($37,500.00) dollars.

IV.

That the said estate was of the value of 123,077 Mexican Pesos, as appraised in the testamentary proceedings su-sequent to the death of the said Jacinto Lopez; but the Plaintiffs aver the fact to be that the said estate was then actually worth the sum of about three hundred thousand pesos, and that the said appraised value of 123,077 pesos was a fraudulent estimate placed upon the value of said property by Pablo Ubarri Capetillo, or at the instance of said Ubarri, by the Appraisers, for the purpose of enabling said Ubarri to fraudulently obtain the ownership thereof, as will hereinafter be more fully recited and set forth.

That immediately after the death of the said Jacinto Lopez, the

following abintestato proceedings were had, to wit: the judicial occupation; the declaration of the heirs by the court; cessation of the judicial occupation; the appointment of Pablo Ubarri administrator of the estate under power of attorney by Concepción Laborde, the widow of deceased; the making of an inventory and appraisement of the estate; liquidation of the inheritance property; partition of the estate and adjudication to each heir of his portion or interest in the estate, and an apportionment to the widow of sufficient property for the payment of claims against the estate; approval of the Court to this act of partition; protocolization of the partition made; registration in the Registry of Property of the portion allotted to each one of the heirs, and of the property set aside and adjudicated to the widow Concepción Laborde for the payment of debts, or claims against the estate.

V.

That in these abintestate proceedings the heirs were represented by the Procurador, Tomás Caballero.

VI.

That by order of the Court on the 23rd of April, 1885, the following named persons were declared to be the heirs of the said Jacinto Lopez, share and share alike, to wit: Nicolasa Trinidad Lopez García, Luisa Antonia Lopez Garcia, Francisca Luisa Lopez Laborde; Jacinto Lorenzo Lopez Laborde, María Concepción Lopez Laborde, Enrique Lopez Laborde and Manuel Demetrio Lopez Aborde, and the estate of the said deceased was by order of the Court duly adjudicated and apportioned, as follows:

To the Widow for the Payment of Claims Against the Estate.

A House, the lower part of brick, and the upper part wood, valued at	$1,200.00
An Oven to make bricks	120.00
Two evaporadoras, Wetgel, of Copper	700.00
A saw mill with its appurtenances	3,038.35
Four hogsheads of sugar	140.00
Ten acres of land in sugar cane	150.00
Four palm groves with 182 palm trees	364.00
One tract of first-class land of 120 acres, bounded on the North by the property of Trinidad Lopes; on the South by the country road, between Maracayo and Toa-Baja; on the East by the Dorado River, and on the West by the high road which passes by this town, of the value of $150.00 per acre	$18,000.00
Another tract of land six and a half acres, first-class, bounded on the North and East by Santa Barbara Plantation; on the South by the Property of Trinidad Lopez; and on the West by the Dorado high road, of the value of $150.00 per acre	975.00

Another tract made up of 1760 41/100 acres of 2nd, 3rd, 4th, and 5th class bounded on the North by the sea; on the South by Pedro Lopez, Juan Marrero, and Santa Barbara Plantation, and Carmen Plantation; on the east by the land of Pedro Martorell and the Plantations Santa Barbara and Santa Rita, the land of Enrique and Jacinto Lopez, and on the West by the Plantations Ceiva and San Vicente, valued all according to class, at	21,677.50
Another property of 668½ acres of 3rd class land, bounded on the North by Carmen Plantation, and the land of Juan Marrero, on the South by the Plantation Santa Elena; on the East by the land of Celestino Garcia, José C. Carniro and Bernardino Benitez, and on the West by the land of Maximo de los Santos; valued at $25 per acre	16,712.50
Total	$63,077.35

51 *Share Apportioned to Antonia Lopez Garcia.*

A wash-stand of marble	$6.00
A wardrobe	25.00
The image of San Antonio	20.00
A mule with her young one	45.00
A mare with her young one	30.00
A horse	30.00
A tract of land made up of 73 and 34/100 acres of second-class land, bounded on the North and East by the land of Jacinto Lopez y Laborde; on the South by the land of the same party; the country road and the land of Lucas Marrero; and on the West by the land of Pedro Lopez, valued at $100 per acre	7,344.00
Total	$7,500.00

Share Apportioned to Trinidad Lopez Garcia.

A walking stick, gold handle	$25.00
Four yoke of oxen	300.00
A wooden house, roofed with shingles	300.00
Two horses	60.00
A tract of land made up of 45 and 65/100 acres of land first-class, bounded on the North by the land adjudicated to Concepción Laborde; on the South by the land of José María San Juan; on the East by the Dorado River; and on the West by the road of this town; valued at $150.00 per acre	6,815.00
Total	$7,500.00

Share Apportioned to Jacinto Lopez y Laborde.

A gold watch and chain		$130.00
A barometer in bad condition		.50
	Two drawings of Porto Rico	2.00
52	One desk chair	$3.00
	An old desk	8.00
Twenty chairs in bad condition		22.50
A piano in bad condition		80.00
Two double barreled guns		30.00
A revolver		6.00
A Remington rifle		16.00
A writing table		6.00
A book case		2.00
One iron bed		8.00
A marble washstand		4.00
Two wooden washstands		2.00
A wardrobe		20.00
Two old trunks		2.50
An old valise		1.50
Two cots		3.00
One table		3.00
One pig		1.00
Three clocks in bad condition		20.00
An old sideboard		2.00
A saddle		4.00
Six rocking chairs		24.00
Two sofas		10.00
The dwelling house appraised in the plantation Inventory		1,200.00
A ranch roofed with galvanized iron		160.00
A ranch roofed with shingles used as a carpenter shop		150.00
Another building used for storing pulp		70.00
Another building		100.00
A wooden house roofed with palm leaves		50.00
	One oven to burn lime	120.00
53	Twelve old boilers	$60.00
	Eight pails	4.00
Two lamps		1.50
Eight pairs of cart wheels		80.00
Forty one old tires		41.00
Six axles for carts		24.00
A buggy in bad condition		100.00
A sloop		4.00
Twelve empty hogsheads		12.00
A heap of old iron		25.00
Two horses		80.00

A tract of land made up of 164 and 92/100 acres of which 123 acres are of the 5th class, at $5.00 per acre, and the balance of the second class at $100.00 per acre, bounded on the North by land of Enrique, Manuel, Consuelo and Concepción Lopez, on the South by the country road Higuillar, and the property of Antonia Lopez, on the East by the high road of Dorado, and on the West by the property of Antonia Lopez, and the land adjudicated to Concepción Lopez	$4,807.50
Total	$7,500.00

Share Apportioned to Luisa Lopez Laborde.

An iron bed	8.00
Twelve knives and twelve forks of silver	30.00
A mare	30.00
A horse	30.00
A share in the main office building of the plantation	1,600.00
A portion of the machinery and other appurtenances thereof	1,815.00
54 A tract of land made up of 39 and 86/100 acres, second-class, bounded on the North by the Santa Barbara Plantation; on the South by the property of Concepción Lopez; on the East by the Dorado road; and on the West by the property of Consuelo Lopez; valued at $100 per acre	$3,986.00
Total	$7,500.00

Share Apportioned to Concepcion Lopez Laborde.

An iron bed	$8.00
A saddle	4.00
Kitchen utensils	4.00
Twenty-four silver spoons	48.00
A mare	30.00
A horse	30.00
A share in the main office building	1,600.00
A portion of the machinery and appurtenances thereof	1,815.00
A tract of land made up of 39 and 60/100 acres, second-class land, bounded on the North, by the property of Luisa Lopez, on the South by the property of Jacinto Lopez, on the East by the high road of Dorado, and on the West by the property of Consuelo Lopez, valued at $100.00 per acre	3,960.00
Total	$7,500.00

Share Apportioned to Consuelo Lopez Laborde.

An iron bed	$8.00
A three-lights lamp	10.00
A marble washstand	6.00
A wardrobe	20.00
A marble bureau	6.00
A saddle	4.00
55 An image of Jesus	$20.00
Four spitoons	1.00
A mule	20.00
A mule and her colt	45.00
A mare	30.00
A horse	30.00
A share in the main office building of the plantation	1,600.00
A portion of the machinery and other appurtenances thereof	1,815.89
A tract of land made up of 38 and 84/100 acres of second-class land, bounded on the North by the Santa Barbara Plantation, on the South by the property of Jacinto Lopez, on the East by the property of Luisa and Concepcion Lopez and on the West by the property of Manuel Lopez, valued at $100 per acre	3,884.20
Total	$7,500.00

Share Apportioned to Manuel Lopez Laborde.

An iron bed	$8.00
Three gold frames	1.00
A wardrobe	20.00
A dining room table	20.00
A sideboard	2.00
A yoke of oxen	75.00
Two mares	60.00
One Horse	30.00
A share in the main plantation building	1,600.00
A portion in the machinery and appurtenances thereof	1,815.00
A tract of land made up of 38 and 68/100 acres of second class land, bounded on the North by the Santa Barbara Plantation, on the South by the property of Jacinto Lopez, on the East by the property of Consuelo Lopez, and on the West by 56 that of Enrique Lopez, valued at $100.00 per acre	$3,868.20
Total	$7,500.00

Share Apportioned to Enrique Lopez Laborde.

An iron bed	$8.00
Two pine tables	1.00
A filter	1.00
A yoke of oxen	75.00
A mare	30.00
Two horses	60.00
A share in the main building of the plantation	1,600.00
A portion of the building and appurtenances thereof	1,815.80
A tract of land made up of 39 and 9/100 acres of second-class land bounded on the North by the Santa Barbara Plantation; on the South by the property of Jacinto Lopez; on the East by that of Manuel Lopez, and on the West by the land adjudicated to Concepcion Laborde, valued at $100.00 per acre	3,909.20
Total	$7,500.00

(N. B.) If in the future new property should turn up belonging to the Succession, or the property divided should have less, the increase or diminution shall be made in the amount apportioned to each one of the heirs, in the same proportion that has served as basis for the present division.

Porto Rico, July 1, 1886.

FRANCISCO DE P. ACUNA.

VII.

That the accountant and divider of the deceased's estate was the lawyer Francisco de P. Acuña; and the guardian *ad litem* of the minors was Julian Matienzo; the representative of the widow
57 was Pablo Ubarri y Capetillo, substituted by Tomás Caballero, his Attorney in fact.

VIII.

That in the intestate proceedings had the following accounts or claims were set forth as against the deceased's estates:

Luisa Antonia Lopez for the balance of her share in her mother's estate and other claims	$1,188.00
Pablo Ubarri	24,000.00
Ricarda Hernandez	5,000.00
Santiago Echeveste	3,325.00
José Pons	2,160.00
Leopoldo Vazquez y Prada	1,701.80
Quintin Guardiola	1,000.00
Andrés Girona	400.00
Successors of Dorado	150.00
Zalduondo y Valle	168.00
José Rodríguez	143.00

Font y Roselló	112.53
Ahumada y Company	51.20
Viuda de Echevarria y Co.	50.78
Melon y Company	10.98
Elizaldo y Guerrero	25.65
Joaquín Peña	13.00
Candido Hernandez	39.73
Forteza Hermanos	25.70
Pedro Córdova	246.33
José Brustenga	25.00
Guillermo Rubert	50.00
Dr. Larregui	80.00
Luis Aguilar	82.00
Total	$40,848.30

58 That all of these claims or debts, if due at all, should have been paid, by the widow of said Jacinto Lopez from the portion of the deceased's estate set apart for the payment of said claims.

IX.

The widow of the said Jacinto Lopez, who had by the terms of the division of the said estate, become the trustee for all of the creditors of said estate, and held property with which to pay said debts, believed, or averred, that the said debt claimed by the said Pablo Ubarri y Capetillo was not valid, and therefore she refused to pay the same.

That upon the refusal of the widow of the said Jacinto Lopez to pay and discharge the claim set up by the said Ubarri, the latter brought an action against the succession of the said Jacinto Lopez, which included the Plaintiffs, who were at the time said action was brought, each one of them, under the age of twenty-one (21) years, and the said Ubarri brought said action against the widow of said Lopez as representative of the said minor heirs, notwithstanding the fact that sufficient property had been allotted to the widow for the payment of all claims and debts against the deceased's estate, and that the said Ubarri had accepted said assignment in settlement of his own claim, by his direct intervention in the testamentary proceedings, and notwithstanding the opposition of interest existing between the mother and the children by the former refusing to pay a debt which the children were willing to allow; and plaintiffs further allege that upon the refusal of said widow to allow said demand, and the bringing of said action, the said Pablo Ubarri, wrote said widow that he would not show her the details of said account, but that if forced to do so, he would bring it to the court; and he would regret to see her children left destitute, said Ubarri meaning that he would make said family suffer if they disregarded his wishes.

X.

That during the progress of Ubarri's said action against
59 the Succession for the collection of his claim, and before a decision had been rendered, the following tracts of land were attached by the municipality of Dorado for the payment of taxes for the years 1885, 1886, and 1887, as follows: for the payment of $948.18 (Mexican) as taxes, and $66.37 as costs, 200 acres of land of the fifth class, which was part of San Antonio Plantation, situated in Higuillar ward, bounded on the North by land which formerly belonged to the Succession; on the East by land of Enrique Lopez y Laborde; on the South by land belonging to said Concepción Laborde; and on the West by the estate known as Central San Vicente, which land is detached from the 2760 acres and which had been set apart for the payment of debts against said estate, adjudicated to Concepción Laborde, and registered in her name, and in the Register of Property. This land was appraised by experts appointed by the municipality of Dorado at $10.00 per acre.

A tract of land belonging to Jacinto Lopez y Laborde to pay $97.82 taxes and $6.84 costs, 25 acres of land of the fifth class were attached in the Higuillar ward, bounded on the North by the land of Concepcion Laborde; on the East by land of the said Jacinto Lopez, attached by the State; on the South by the road of Higuillar, on the West by land belonging to Jacinto Lopez, which land was detached from the 164.94 cuerdas adjudicated to him, and which are registered in his name in the Registry of Property. This land was appraised at $20.00 per acre.

A tract of land belonging to María Concepción Laborde, for the payment of $31.36 taxes and 19 cents costs. There were attached 10 acres of third-class land, situated in Higuillar ward, and bounded on the North by the land of Francisco Lopez y Laborde, on the East by other land of Maria Concepción Lopez y Laborde; on the South by land of Jacinto Lopez; and on the West by land of said María Concepción Lopez, which parcel is detached from the 39.60 acres which were apportioned to her, and are registered in her
60 name in the Registry of Property. This land was appraised at $20.00 per acre.

Francisca Luisa Lopez Laborde for the payment of taxes, of $31.17 and $2.18 as costs, there were attached 10 cuerdas of second-class land, situated in Higuillar ward, bounded on the North by land belonging to Francisca Luisa Lopez; on the East by the Dorado military road; on the South by land belonging to said Francisca Luisa Lopez, which land was detached from the 39.86 cuerdas that was adjudicated to her, and on the West by land belonging to Consuelo Lopez. This land was appraised at $40.00 per acre.

Maria Consuelo Lopez, to collect $30.56 taxes and $2.14 costs, there were attached 10 acres of second-class land situated on the Higuillar ward, bounded on the North by land belonging to María Consuelo Lopez, on the East by the land of Francisca Luisa Lopez, on the South by the land of the said Consuelo Lopez; and on the West by other land belonging to Manuel Lopez Laborde, which land was detached from the 38.54 acres that were adjudicated to her, and are

registered in her name in the Registry of Property. This land was appraised at $40.00 per acre.

Manuel Lopez y Laborde, for the payment of $30.45 taxes and $2.13 costs, there were attached 10 acres of land of second-class, situated in the Higuillar ward, and bounded on the North by land belonging to Manuel Lopez; on the East by land of María Consuelo Lopez, on the South by land of said Manuel Lopez; and on the West by the land of Enrique Lopez which parcel was detached from the 38.42 acres that were adjudicated to him and registered in his name. This land was appraised at $40.00 per acre.

Enrique Lopez Laborde, for the payment of $31.42 for taxes, and $2.19 costs, there were attached 10 acres of land, situated in the Higuillar ward, bounded on the North by land belonging to Enrique Lopez; on the East by the property of Manuel Lopez, on the South by land belonging to said Enrique Lopez, and on the
61 West by land of Concepción Laborde, which parcel was detached of the 39.09 acres that were adjudicated to him, and are registered in his name. This land was appraised at $40.00 per acre.

XI.

The Plaintiffs further aver that all of the lands sold for taxes as above set forth by the Municipality of Dorado, were directly or indirectly purchased by and adjudicated to said Pablo Ubarri; that all such proceedings were had during the pendency of his said action against the said Succession of Jacinto Lopez, during which time also said Ubarri was acting as the attorney in fact of Concepción Laborde, the said widow of Lopez; and that because of his great wealth and influential position, the said Pablo Ubarri was in position to dictate and control the actions and conduct of said municipality in all of the steps taken and essential to the assessment, sale of property, and the adjudication thereof to the purchaser, and that he did so direct and control the same. And Plaintiff- further allege that the said sale of said property for taxes as above set forth was made at a price greatly below the value thereof, and that said sale and adjudication of property thereunder was made under the inspiration and direction of said Pablo Ubarri, and was in accordance with his definitely formed purpose to acquire said property himself, and to acquire all of the property of said estate as intimated in his letter to said Concepción Laborde at the time he stated to her that if she did not pay his demand her family might be left homeless. Plaintiffs further aver that the entire amount of said taxes was in the aggregate the sum of 1,078.00 Mexican dollars; That said Pablo Ubarri purchased said property as aforesaid at a mere nominal price, even as compared with what the same was appraised by the said municipality of Dorado, and that said appraisement was only nominal in comparison with the appraisement made by the testamentary appraisers, which last appraisement was also made far below the actual value of the property in accordance with the instructions of said Ubarri.

62

XII.

Plaintiffs further aver that in substance and in fact, during the entire testamentary proceedings covering the partition of the property, the appraisement of the same, protocolization of the different interests as divided, said Ubarri always acted not only for himself, but also was in full charge and control, through his agents or attorney, of all of the property involved in said estate.

XIII.

The Plaintiffs further aver and charge the fact to be, that during all of the times in this complaint set forth, the said Tomás Caballero, who was appointed by said Pablo Ubarri as his substitute attorney in fact, was in truth merely the agent of said Pablo Ubarri and that the said Tomás Caballero acted and did in all things just as he was instructed and directed to do by the said Pablo Ubarri, and that as a matter of fact the said Pablo Ubarri was in full charge and control of the said estate of the Succession of Jacinto Lopez, deceased, from the date of his first assuming direction and control thereof immediately after the death of Jacinto Lopez until he became the owner thereof under the proceedings in this complaint set forth. Plaintiffs further aver that during the time said property was being sold for taxes as alleged, the said Pablo Ubarri had full and absolute control of said estate, and not only directed the sale of said property for taxes to the end that he might himself become the purchaser thereof, but that by reason of his attachment of the premises, he could and did prevent the realization of any of the products therefrom, or of the personal property connected therewith, from which to pay the said taxes and thus save the said land to said estate; and that all these things were fraudulent as to these heirs, and that in his conduct of their affairs, and in his relations with them in connection with said property, each and every of his transactions were fraudulent and maliciously intended to deprive said heirs, these plaintiffs of their interests in said estate.

63

XIV.

That said Ubarri was able to do these things by reason of the fact that at all of the times in this complaint set forth, he was the general attorney in fact for the said Concepción Laborde, with power to do all things in connection with said estate, and also with power of substitution, and that under these powers he appointed Tomas Caballero as his substitute attorney in fact for said widow, and caused to be appointed his nephew, Julian Matienzo, as guardian for the heirs of said Jacinto Lopez; that he caused and directed the appointment of the appraisers and designated who they should be, and that his attorney, Francisco de P. Acuña, was the divider of the property, and that the said Ubarri controlled each and every detail on all sides in connection with said estate and the litigation in connection therewith, except the employment of Lopez Landron to defend said Concepcion Laborde in the action brought against her by said Ubarri for the collection of his said alleged claim.

64

XV.

Plaintiffs further aver that at the time of the commencement of this action against the Succession of said Jacinto Lopez, the said Ubarri caused to be levied upon said property an attachment of the same, by virtue of which the said property ceased to be productive, for any purpose whatever; and because of said attachment, no funds could be realized with which to pay taxes, nor with which to support the family of said deceased Jacinto Lopez, and in connection with said attachment proceedings, Plaintiffs further aver that the attorney of said Concepción Laborde moved that said attachment be dissolved; and thereupon said Concepción Laborde, believing that said attachment was dissolved ordered that some wood be cut and sold from the estate Monte Rey, situated in the jurisdiction of Vega-Alta, for the purpose of supplying her family with the necessities of life; and that thereupon the said Ubarri caused the arrest of said Concepcion Laborde, because of the cutting of said wood, and although upon the statement being made in Court as above set forth the said Concepcion Laborde was acquitted of any wrong intent in the premises, and the prosecution dismissed; yet the said Ubarri prosecuted an appeal to the Supreme Court of Porto Rico, wherein the judgment of the lower court was reversed and Concepcion Laborde was fined in the sum of 140 pesos, and sentenced to be committed to jail in the event said fine was not paid; and Plaintiffs further aver in connection with said proceedings that said Concepción Laborde was in ill health at the time the said sentence was given, and that the court was petitioned to suspend or modify the said sentence of imprisonment because the said Concepción Laborde was unable to pay the fine, but that said Ubarri demanded that she be sent to jail, whereupon, her son, Jacinto Lopez, succeeded in borrowing the amount of said fine and paying the same into court in satisfaction of said judgment; but that later the said money was returned to said Concepcion Laborde upon the receipt of a Royal Order from Spain, granting full pardon to the said Concepcion Laborde.

65

XVI.

Plaintiffs further aver with a view of more clearly showing the relations of the said Ubarri to the Succession of Jacinto Lopez and the relations of the various persons appointed to transact the business in connection therewith, to said Ubarri, that the said Tomás Cabellero was his confidential business agent, especially in dealing with legal matters; That the said Julian Matienzo, appointed under the direction of Ubarri as the guardian of the minor children of said Jacinto Lopez, during the testamentary proceedings, was a confidential clerk and agent of said Ubarri; That the said divider who partitioned said estate, Francisco de P. Acuña, was the leading counsel for said Ubarri in the transactions of important legal matters; That the appraisers appointed to value said estate for the testamentary proceedings were appointed and named by direction of said Ubarri; That the municipal officers of the Municipality of Dorado aided and abetted said Ubarri in his efforts to gain control of said prop-

erty through tax sale and that always his agent was present to look after a purchase of said land for the amount of the taxes, although no bid was ever made for the same, but on the contrary no bidders were ever present to make offers to said property until such times as it would be lawful to declare said property sold for the amount of the tax, and that by such methods all of the property taxed was finally adjudicated to said Ubarri as a part of his design and purpose to acquire the entire estate.

XVII.

Plaintiffs further allege that the said estate, that is to say, all of the said real estate, in all more than 4,000 acres, besides personal property, was in the year 1889, adjudged to said Pablo Ubarri in payment of his alleged debt of 17,000 dollars and interest amounting in all as fixed by the appraisers to 24,000 Mexican dollars.

66

XVIII.

That at the time of his death the said Jacinto Lopez owned as a part of his estate horses and cattle of great value, to wit: about the sum of $35,000.00, which formed a portion of the total value of said estate, and that said live stock with some fifty head of horses, was disposed of under the direction of said Pablo Ubarri, except about four thousand dollars' worth, which were sold to pay debts of said Jacinto Lopez, deceased.

XIX.

Plaintiffs aver that at the time of the death of said Jacinto Lopez, his said estate was of the value of 300,000 Mexican Pesos, and that by the manipulations herein set forth on the part of said Pablo Ubarri, which were fraudulent as against these Plaintiffs, the said fraud consisting of the complete and successful control and direction of all persons whatsoever connected with the liquidation of said estate, the said Ubarri damaged, cheated, and defrauded the said estate, and especially these plaintiffs, out of the sum of 275,000 Mexican dollars.

XX.

That the said sum of 275,000 Mexican dollars, was in the year 1889 equivalent to the sum of $156,750.00, lawful money of the United States.

XXI.

Plaintiffs further allege that all of said property has been sold and disposed of by said Ubarri, or his successors, as far as these plaintiffs are advised, without knowledge on the part of the purchasers of said estate of the fraudulent transactions of said Ubarri in connection therewith.

Wherefore Plaintiffs demand judgment against the said Succession of Pablo Ubarri for the sum of One hundred and fifty-six thousand

seven hundred and fifty ($156,750.00) dollars, lawful money
67 of the United States, together with interest thereon at the rate of 6% per annum from the — day of ——, 1889, until the rendition of judgment herein.

WILLIS SWEET,
Attorney for Plaintiffs.
HENRY F. HORD,
Solicitor for Francisca Lopez Laborde.

MUNICIPALITY OF SAN JUAN,
Island of Porto Rico, United States of America, ss:

Jacinto Lopez being first duly sworn deposes and says: I am one of the Plaintiffs named in the foregoing action. I have read the complaint herein and know the contents therein set forth, and — that the same is true of my own knowledge, except as to matters and things therein set forth upon information and belief, and as to those matters and things, I believe it to be true.

J. LOPEZ LABORDE.

Sworn and subscribed to before me this 11th day of August, 1906.
H. H. SCOVILLE, *Clerk,*
By R. M. KELSEY, *Deputy.*

Service accepted by copy this 13th day of August, 1906.
FRANCIS H. DEXTER,
Attorney for Defendant Rufino Ubarri.

68 *Plea of Buenaventura Ubarri to the Jurisdiction.*

(Filed August 25, 1906.)

JACINTO LORENZO LOPEZ LABORDE ET AL.
vs.
PABLO UBARRI YRAMATEGUI ET AL.

Plea of Defendant Buenaventura Ubarri to the Jurisdiction.

The defendant Buenaventura Ubarri é Yramategui specially appearing under protest for the purpose of presenting this his plea to the jurisdiction of this Court over this cause and the parties thereto, and in support of this his special plea says:—

That at the time of the institution of this suit and at all times since, the defendant José María Ubarri, was and is a citizen of Porto Rico, having been an inhabitant and resident of this Island and district on the 11th day of April, 1899, and not having elected to preserve his allegiance to the Crown of Spain on or before the 11th day of April, 1899, according to the provisions of the Treaty of Peace entered into on the 11th day of April 1899 between the United States and Spain.

Defendant furthermore says, that he is a necessary and indispensable party to this suit.

Wherefore he prays that the complaint herein be dismissed with costs imposed upon Plaintiffs.

J. TEXIDOR,
SALVADOR SUAU,
Attorneys for Defendant Buenaventura Ubarri é Yramategui.

69 Salvador Suau being duly sworn upon his oath says:

1. I am one of the attorneys of the defendant in this action.

2. That the facts and the contents thereof in the foregoing plea are true.

3. The reason why the verification is not made by the defendant is that he is absent in the Kingdom of Spain.

SALVADOR SUAU.

Subscribed and sworn to before me this 25th day of August, 1906.
[NOTARIAL SEAL.] FRANCISCO SOCORRO,
Notary Public.

To the plaintiffs above named or their attorney, Willis Sweet:

Please take notice, that the foregoing plea has been filed in the above-entitled cause and that the same will be called for hearing on Monday next the 27th inst., in the above-entitled Court at the opening thereof, or as soon thereafter as counsel can be heard.

San Juan, P. R., August 25th, 1906.

J. TEXIDOR,
SALVADOR SUAU,
Attorneys for Defendant Buenaventura Ubarri é Yramategui.

70 *Journal Entry.*

August 25, 1906.

JACINTO LORENZO LOPEZ LABORDE ET AL.
vs.
FRANCISCA LUISA LOPEZ LABORDE ET AL.

Comes now Buenaventura Ubarri by his attorneys Jacinto Texidor and Salvador Suau, and files a plea to the jurisdiction.

Journal Entry.

September 5, 1906.

JACINTO LORENZO LOPEZ LABORDE ET AL.
vs.
FRANCISCA LUISA LOPEZ LABORDE ET AL.

Plea to the jurisdiction of the Court heretofore filed by Buenaventura Ubarri is heard and submitted, and counsel for defendant is given until the 8th instant to file brief in support thereof.

Journal Entry.

September 11, 1906.

JACINTO LORENZO LOPEZ LABORDE ET AL.
vs.
PABLO UBARRI ET AL.

The plea to the jurisdiction heretofore filed herein by Buenaventura Ubarri *and which was* argued and submitted to the Court, and counsel for said defendant having been given until the 8th instant to file a brief in support of said plea and having failed to file
71 said brief, said plea is now overruled, and upon motion of Willis Sweet attorney for the plaintiffs, he is allowed to amend his complaint by striking out the name of José María Ubarri as a party defendant to this suit.

The plaintiffs file a bond for an attachment heretofore authorized by order of the Court, and the Court directs that said bond be approved by the Clerk, upon satisfying himself as to the form thereof and sufficiency of sureties thereon.

72 *Attachment Bond.*

(Filed September 11, 1906.)

JACINTO LORENZO LOPEZ LABORDE ET AL.
vs.
PABLO UBARRI YRAMATEGUI ET AL.

Whereas the above named plaintiffs have commenced an action in the District Court of the United States for Porto Rico against the above named defendants, and have applied for a writ of attachment upon certain described property in the petition to the Court asking for the said writ, and in the writ of attachment itself fully set forth;

Now therefore we, the undersigned, residents of Porto Rico, in consideration of the premises and of the issuing of said attachment, jointly and severally undertake in the sum of $2,500 (two thousand five hundred dollars) and promise to the effect that in case said attachment shall issue the said plaintiffs will pay to the defendants herein any damages or damage, not exceeding the sum of $2,500 (twenty-five hundred dollars), they, or either of them may suffer or sustain by reason of the said attachment, if the said District Court of the United States for Porto Rico shall finally decide that said attachment was wrongfully issued or that said plaintiffs were not entitled thereto.

ARTURO BRAE. [SEAL.]
MANUEL LOPEZ LANDRON. [SEAL.]

UNITED STATES OF AMERICA,
District of Porto Rico, ss:

Arturo Brae and Manuel Lopez Landron being first duly sworn, each for himself, and not one for the other, deposes and says: I am worth the amount fixed in said bond as the penalty thereover
73 over and above all debts, liabilities and exemptions in real estate situated within the jurisdiction of the United States District Court for Porto Rico.

ARTURO BRAE.
MANUEL LOPEZ LANDRON.

Subscribed and sworn to before me this 28th day of August of the year 1906.

[NOTARIAL SEAL.] CRUZ CASTRO.

Approved, Sept. 11, 1906.

[Seal of the U. S. District Court for Porto Rico.]

H. H. SCOVILLE, *Clerk.*

74 *Attachment. Issued September* 12, 1906.

THE UNITED STATES OF AMERICA,
District of Porto Rico, ss:

The President of the United States of America to the Marshal of the District of Porto Rico, Greeting:

Whereas, Jacinto Lorenzo Lopez Laborde, María Consolación Lopez Laborde, Manuel Demetrio Lopez Laborde, Enrique Lopez Laborde, María Concepción Graxiana Lopez (by her grandmother Concepción Laborde), and Francisca Luisa Lopez Laborde have this day on the necessary affidavit being filed, and bond given, obtained an order of attachment against Pablo Ubarri Yramategui, Rufino Ubarri Yramategui, Buenaventure Ubarri Yramategui, and Modesta Ubarri Yramategui, as the Successors of Pablo Ubarri, deceased, in a certain action now pending in the District Court of the United States, for the District of Porto Rico, wherein the said Jacinto Lorenzo Lopez Laborde *et al.* are plaintiffs and the said Pablo Ubarri Yramategui *et al.* are Defendants to recover of the said Defendants the sum of One Hundred and fifty-six thousand seven hundred and fifty dollars ($156,750.00),

Now, therefore, you, the said Marshal, are hereby commanded to attach, and safely keep, the lands, tenements, goods, chattels, stocks, or interest in stocks, rights, credits, moneys and effects of the said Pablo Ubarri Yramategui *et al.* Defendants, in your District, not exempt by law from being applied to the Plaintiffs' claim, or so much thereof as will satisfy to the said Plaintiff- *his* claim, for One Hundred and fifty-six thousand and seven hundred and fifty dollars ($156,750.00) and the probable cost of this action.

And of this Order of attachment, and of your proceedings thereon, you will make due return forthwith.

75 Witness, the Honorable Bernard S. Rodey, Judge of the District Court of the United States this twelfth day of September, A. D., 1906, and in the 131st year of the Independence of the United States of America.

[Seal of the U. S. District Court for Porto Rico.]

H. H. SCOVILLE, *Clerk.*

Marshal's Return.

(Filed September 25, 1906.)

I hereby certify and return that I received the annexed Writ of Attachment on September 12th, 1906, at San Juan, P. R. and executed same in the following manner:

On September 24th, 1906, I delivered true copies of Order of Attachment and Public Notice of Attachment to Rufino Ubarri, Defendant in said cause at Puerto de Tierra, San Juan, P. R. I was unable to serve Pablo Ubarri Yramategui, Buenaventura Ubarri Yramategui, and Modesta Ubarri Yramategui, the other defendants named herein, they not being within the district.

And on the same date I attached the following described property namely: "Property No. 61 named "Quebrada Lajas," situated in the wards of Mediania Alta y Mediania Baja, of the town of Herrera y Cienaga Baja, places called Minunini, Pabon and Quebrada Baja, in this jurisdiction of Rio Grande and Loiza, composed of 2,092-57 acres more or less. Bounded on the north by Don Ricardo Gallardo (his succession today), Cecilio Lopez, Manuel Galvarin, Matos Succession, Cienga del Junco, Serapio Planellas, Vicente Monge, Juan Lopez, Lorenzo and Galo Casanova, Sandalio Quiñonez, Matias Allendes, Federico Lopez, and Matias Osorio; on the south by Avelino Rescalh, the road, Eduardo Gonzalez, property of Gondian and Agustin Casals, on the east by the lands of Ramon Villamil, Juan de Molfuelleda, Antonio Escobar, Isidro Calderon; and on the west, part by the Herrera River, and the Succession of

76 Ricardo Gallardo. This property is owned by Rufino and Pablo Ubarri, registered in book 2, page 58 record 1 and 8," by handing true copies of Order of Attachment and Public Notice of Attachment to W. S. Marr, at Canovanas, P. R. as representative of Canovanas Sugar Factory, Ltd., lessee of said property and by posting upon said property copies of Order of Attachment and of Public Notice of Attachment.

Likewise on the same date I attached the following described property, namely: "Property No. 730, folio 168 over, volume 17, registered in the name of Buenaventura Ubarri, and situated at No. 34 San Francisco Street, in the city of San Juan, P. R., composed of 19 meters 10 centimeters front by 39 meters 40 centimeters deep or composed of an area — about 352 meters 50 square centimeters,

bounded on the right by the house of German Araujo, to the left by Jose Hernaiz, and on the back by Rafael Palacios, Angel Navajas, Eustaquio Cabrera, Carmen Mechtler y Augusto Cotter;" by handing true copies of Order of Attachment and of Public Notice of Attachment to Joaquin Matienzo at San Juan, P. R., lessee of said property and by posting upon said property copies of Order of Attachment and Public Notice of Attachment.

Likewise on the same date I attached the following described property, namely: "Property No. 1244, registered in folio 200 volume 30, record 2, composed of 21 areas 14 centiareas with a two-story masonry house built on it, bounded as follows: On the north by Don Jorge Esteban Saldaña; on the South by a road; on the east by Juan Asencio; and on the west by the road that leads to the Park, being the property of Pablo Ubarri;" by handing a true copy of Order of Attachment and of Public Notice of Attachment to Severo Ochoa, President of the Board of Directors of "La Sociedad Mutua de Santurce," at San Juan, P. R., lessee of said property and by posting on said property copies of Order of Attachment and Public Notice of Attachment.

77 Further on September 25th, 1906, I delivered to the Registrar of Property of San Juan, P. R. copies of the Order of Attachment and Public Notice of Attachment and directed that proper annotations be made in the records of that office.

This at San Juan, P. R. September 25, 1906.

H. S. HUBBARD,
U. S. Marshal.

78 *Journal Entry.*

September 17, 1906.

JACINTO LORENZO LOPEZ LABORDE ET AL.
vs.
FRANCISCA LOPEZ LABORDE ET AL.

Now comes Rufino Ubarri, one of the defendants herein, by his attorney F. H. Dexter, and files a stipulation extending his time to answer until the first day of November, 1906.

79 *Stipulation Extending Time for Defendant Rufino Ubarri Yramategui to Answer.*

(Filed September 17, 1906.)

JACINTO LORENZO LOPEZ LABORDE ET AL.
vs.
PABLO UBARRI YRAMATEGUI ET AL.

It is hereby stipulated between Willis Sweet, attorney for plaintiff, and F. H. Dexter, attorney for defendant Rufino Ubarri Yramategui,

that said defendant Rufino Ubarri Yramategui shall have until the first day of November, 1906, to answer in the above entitled cause.

San Juan, Porto Rico, September 17, 1906.

WILLIS SWEET,
Attorney for Plaintiffs.
F. H. DEXTER,
Attorney for Defendant Rufino Ubarri Yramategui.

80 *Motion of Pablo Ubarri and Modesta Ubarri to Dissolve Attachment herein.*

(Filed September 27, 1906.)

JACINTO LORENZO LOPEZ LABORDE ET AL.
vs.
PABLO UBARRI É YRAMATEGUI ET AL.

Comes now Francis H. Dexter, attorney for Pablo Ubarri and Modesta Ubarri, specially and for the purpose only of objecting to the jurisdiction of this court over the persons of the said defendants, as well as for the purpose of dismissing the writ of attachment herein described, and represents:

That on the 12th day of September 1906, a writ of attachment was issued out of this Hon. Court, against lands, tenements, goods, chattles, etc., of the above named parties defendant, to satisfy the claim of plaintiffs above named in the bill of complaint filed by them herein in which they pray for the recovery of $156,750.

And these defendants say, that on the 24th day of September 1906, the Marshal of this Court, did attach the following described property, to wit:

"Property No. 61, named "Quebrada Lajas" situated in the wards of Mediania Alta y Mediania Baja, of the town of Herrera y Ciénega Baja, places called Minunini, Pabon and Quebrada Baja in this jurisdiction of Rio Grande and Loiza, composed of 2,002-57 acres more or less, bounded on the north by don Ricardo Gallardo, (his succession to-day), Cecilio Lopez Manuel Galvarin, Matos Succession Ciénega del Junco, Serapio Planellas, Vicente Monge, Juan Lopez, Lorenzo and Galo Casanovas, Sandalio Quiñonez, Matías Allendes, Federico Lopez and Matías Osorio; on the South by Avelino Rescalh, the road, Eduardo Gonzalez, property of Gondian and Agustin Casals; on the East by the lands of Ramón Villamil,
81 Juan de Molfulleda, Antonio Escobar, Isidro Calderón, and on the west part by the Herrera River, and the Succession of Ricardo Gallardo. This property is owned by Rufino and Pablo Ubarri registered in book 2 page 58 record 1 and 8.

Property No. 1244, registered in folio 200 volume 30 record 2, composed of 21 areas, 144 cetiares with a two-story masonry house built on it, bounded as follows: On the North by Don Jorge Esteban Saldaña, on the South by a road; on the East by Juan Asencia, and on the west by the road that leads to the Park, being the property of Pablo Ubarri."

These defendants appearing specially as aforesaid say, that this Court is without jurisdiction over their persons and that this Court has no jurisdiction to issue the said writ of attachment for the reason that they are residents now and at the time of the bringing of this action of the Kingdom of Spain, and that the object of this suit is not to enforce or remove a specific lien, charge or claim upon specific real or personal property but the object thereof is only to recover damages in the present action for certain alleged wrong and injuries.

Wherefore the said defendants Pablo Ubarri and Modesta Ubarri appearing specially as aforesaid, pray the Court to dissolve the writ of attachment aforesaid.

F. H. DEXTER,
Appearing Specially as Attorney for the Defendants Pablo Ubarri and Modesta Ubarri.

To the above named plaintiffs or Willis Sweet, Esq., their attorney:

Please take notice that the foregoing petition will be called up for hearing on Saturday the 29th of September, or as soon thereafter as counsel can be heard.

San Juan, P. R. Sept. 26, 1906.

F H. DEXTER,
Attorney Appearing Specially for said Defendants Pablo Ubarri and Modesta Ubarri.

Service of the foregoing accepted, this 27th day of Sept. 1906.

SWEET,
Attorney for Plaintiffs.

82 *Journal Entry.*

September 29, 1906.

JACINTO LORENZO LOPEZ LABORDE ET AL.
vs.
FRANCISCA LUISA LOPEZ LABORDE ET AL.

The motion to dissolve attachment filed by Modesta Ubarri and Pablo Ubarri was argued and submitted, and further action on the matter postponed until the Court reconvenes.

Journal Entry.

October 1, 1906.

JACINTO LORENZO LOPEZ LABORDE ET AL.
vs.
PABLO UBARRI É YRAMATEGUI ET AL.

Willis Sweet, attorney for the plaintiffs herein except Francisca Luisa Lopez Laborde moves the Court for the appointment of a guar-

dian *as litem* for Maria Concepcion Graxiana Lopez, and action upon said matter is postponed until the Court reconvenes.

83 *Stipulation.*

(Filed October 24, 1906.)

JACINTO LOPEZ LABORDE ET AL.
vs.
PABLO UBARRI É YRAMATEGUI ET AL.

It is hereby stipulated and agreed by and between the attorneys for both parties, hereto, that the defendant Ventura Ubarri shall have till the 30th of next October by which to file an answer to the complaint in the above entitled cause.

WILLIS SWEET,
Attorney for Plaintiffs.
J. TEXIDOR,
SALVADOR SUAU,
Attorney- for the Defendant Ventura Ubarri.

84 *Stipulation Extending Time for Ventura Ubarri to Plead.*

(Filed October 29, 1906.)

JACINTO LOPEZ LABORDE ET AL.
vs.
PABLO UBARRI É YRAMATEGUI ET AL.

It is hereby stipulated and agreed by and between the attorneys for both parties, hereto, that the defendant Ventura Ubarri shall have an extended time till the 5th of November by which to file an answer to the complaint in the above entitled cause.

SWEET, ROSSY & CAMPILLO,
Attorneys for Plaintiffs.
J. TEXIDOR,
SALVADOR SUAU,
Attorneys for the Defendant Ventura Ubarri.

85 *Stipulation.*

(Filed November 3, 1906.)

SUCCESSION LOPEZ LABORDE
vs.
PABLO UBARRI Y CAPETILLO ET AL.

Stipulation Extending Time to Plead by Rufino Ubarri and Buenaventura Ubarri.

It is hereby stipulated and agreed that defendants Rufino Ubarri and Buenaventura Ubarri shall have until the 15th of November to

file such pleadings as they respectively may desire to the complaint herein.

San Juan, P. R. November 2nd, 1906.

SWEET, ROSSY & CAMPILLO,
Attorneys for Plaintiffs.
F. H. DEXTER,
Attorney for Defendant Rufino Ubarri.
J. TEXIDOR,
S. SUAU,
Attorneys for Defendant Buenaventura Ubarri.

86 *Special Appearance of Defendants Pablo Ubarri é Yramategui and Modesta Ubarri é Yramategui, for the purpose only of objecting to the jurisdiction of this Court over their persons and to try this case.*

(Filed November 5, 1906)

JACINTO LORENZO LOPEZ LABORDE ET AL.
vs.
PABLO UBARRI É YRAMATEGUI ET AL.

Comes now Francis H. Dexter, attorney for Pablo Ubarri é Yramategui and Modesta Ubarri é Yramategui, who are sued as defendants in the above entitled cause, and as such attorney appears specially and for the purpose only of objecting to the jurisdiction of this Court over the persons of the said Pablo Ubarri é Yramategui and Modesta Ubarri é Yramategui, and further say.

That this action is based upon a complaint filed by the plaintiffs herein against the said defendants and others in and by which said complaint plaintiffs seeks to recover a certain sum of money against said defendants.

The object of the said complaint and of this suit is not to enforce any legal or equitable lien upon or claim to, or to remove any incumbrance or lien or cloud upon the title to real or personal property within this district, but by the complaint filed herein the following prayer is set forth:

"Wherefore plaintiffs demand judgment against the said Succession of Pablo Ubarri for the sum of $156,750 lawful money of the United States together with interest thereon at the rate of six per cent per annum from the — day of ——, 1889, until the rendition of judgment herein".

It is further represented to the court by the undersigned attorney appearing specially as aforesaid and only for the purpose of
87 opposing the jurisdiction of this court, that the said Pablo Ubarri é Yramategui and Modesta Ubarri é Yramategui, were, at the time of the institution of this suit and stil- are subjects of the King of Spain and inhabitants in that Kingdom, the said Pablo Ubarri é Yramategui residing in the City of Madrid and Mondesta Ubarri é Yramategui in the City of Málaga, Spain.

It is further represented by the said attorney appearing specially as aforesaid, that a certain order of this Court dated the 12th day of September 1906, has been published in a newspaper of the City of San Juan, Porto Rico, which purports to be a warning order or notice to the said defendants Pablo Ubarri é Yramategui and Modesta Ubarri é Yramategui, that they shall appear on or before November 5th, 1906, to appear and answer the complaint herein.

The undersigned attorney appearing specially as aforesaid says, that, no personal service has been made or had upon the said Pablo Ubarri é Yramategui and Modesta Ubarri é Yramategui, for the reason that they have not been within this district at any time since the filing of this suit. It is further represented to the Court that the aforesaid warning order or notice is illegal and void for the reason that this Court is without power to obtain jurisdiction over the persons of these defendants in this class of an action and its power in this regard with respect to persons and inhabitants out of the district is limited solely and exclusively to the case where the object of the suit is to enforce a legal or equitable lien upon or claimed to, or to remove any incumbrance, lien or cloud upon the title to real or personal property within the district.

Wherefore the said Pablo Ubarri é Yramategui and Modesta Ubarri é Yramategui, in order to avail themselves of the laws of the United States in these cases made and provided, and to avoid the expenses any annoyances of litigation, having entered their special appearance herein, object to the jurisdiction of this Court to proceed any further herein against them, and pray that as to them this cause be dismissed.

88

FRANCIS H. DEXTER.

Attorney for Pablo and Modesta Ubarri, who appear specially for the purpose only of opposing to the jurisdiction of this Court.

Francis H. Dexter, being duly sworn upon his oath says: That the matters and facts set forth in the foregoing motion are true, and that this affidavit is made by him and not by said Pablo and Modesta Ubarri é Yramategui, because they are residents of the Kingdom of Spain and their signatures and affidavits hereto cannot be obtained in time for the filing of this motion.

FRANCIS H. DEXTER.

Subscribed and sworn to before me this — day of November, 1906.

——, ——,

Notary Public.

89 *Answer of the Defendant Ventura Ubarri.*

(Filed November 14, 1906)

At Law.

JACINTO LORENZO LOPEZ LABORDE ET AL.
vs.
PABLO UBARRI YRAMATEGUI ET AL.

Now comes the above named defendant Ventura Ubarri by his Attorneys Jacinto Texdor y Salvador Suau and in answer to the complaint herein, alleges and says:

I.

That he admits the allegations and things contained in paragraphs I and II of the said complaint.

II.

That as to paragraph IV of said complaint the defendant Ventura Ubarri does not know, and has not been informed, save by said complaint herein, as to the truth of said allegations, and therefore leaves the complainants to make such proof thereof as it may be material.

III.

In answering paragraph V. of said complaint this defendant denies that Pablo Ubarri Capetillo had appraised or had any fraudulent interference in the said appraisement of the property belonging to the estate of said Jacinto Lopez; and he further denies that said estate was or could ever be of the estimated value of $300,000 *dollars*.

As to the allegations contained in the latter part of said paragraph V. above stated, this defendant avers, that he has no knowledge, information or belief sufficient to enable him to answer the said allegation: "That immediately after the death of said Jacinto Lopez, the following abintestate proceedings were had to wit: and etc.";
90 and therefore this defendant denies the same.

IV.

This defendant as to paragraph VI. has no knowledge, information or belief sufficient to enable him to answer the allegations contained in said paragraph VI. and therefore he denies the same.

V.

This defendant does not know and has not been informed save by the said complaint herein, as to the truth of the allegations contained in paragraph VII. of said complaint, and therefore leaves the complainants to make such proof thereof as it may be material.

VI.

This defendant has no knowledge, information or belief to enable him to answer the allegation contained in paragraph VIII. of said complaint and therefore he denies the same.

VII.

This defendant has no knowledge, information or belief to enable him to answer the allegation contained in paragraph IX. and therefore he denies the same, except so far as the same relates to the claim of $24,000 of Pablo Ubarri Capetillo as against the estate of the deceased Jacinto Lopez, that this defendant believes is true and therefore admits the truth thereof.

VIII.

This defendant admits the truth of the allegations contained in paragraph X. as to the refusal of the said widow of Jacinto Lopez to pay the debt claimed by the said Pablo Ubarri Capetillo and that said Ubarri thereupon and at the refusal of the widow of the said Jacinto Lopez to pay and discharge the claim set up by the said Ubarri, the latter brought an action against the succession of the said Jacinto Lopez which included the above named plaintiffs.

This defendant further denies that Pablo Ubarri Capetillo had then or at any subsequent time thereafter in any manner, satisfaction for his claim set up in the testamentary proceedings as al-
91 leged in said paragraph, and further denies all other matters and things contained in said paragrap*g* X. therein alleged.

IX.

This defendant admits the facts of the allegation contained in paragraph XI. except that this defendant denies all that part which relates to the adjudication made to Pablo Ubarri Capetillo directly or indirectly and that said properties were appraised at a price below the value thereof as alleged in said paragraph.

And this defendant further avers and states that the properties spoken of in said paragraph were appraised at its true and fair valuation, and that the property of said estate that was acquired by said Pablo Ubarri Capetillo was so acquired by him at a price justly the value thereof.

X.

This defendant further denies each and every fact contained in paragraph XII. of said complaint.

And this defendant as a defense avers and establishes on information and belief that, Pablo Ubarri Capetillo acquired some of the properties of the said estate or succession of Jacinto Lopez sold for taxes as above set forth, but not all of them as alleged in said complaint, and that the properties so adjudicated to said Pablo Ubarri Capetillo were acquired by him at its fair value, and that the said Ubarri had no control, directly or indirectly, nor any influence or intervention whatever in the assessment and appraisement of said

property with any person or corporation body in regard to the sale and appraisement thereof; and that the price that Pablo Ubarri Capetillo paid for said property sold as aforesaid was the fair and real value thereof.

XI.

This defendant denies each and every allegation contained in paragraph XIII. of said complaint.

92 XII.

This defendant further denies all the facts and matters contained in paragraph XIV of said complaint as the same are therein set forth.

XIII.

As to paragraph XV of said complaint this defendant admits that Pablo Ubarri caused to be levied upon said property an attachment to satisfy the judgment thereof obtained against the succession of Jacinto Lopez in this suit brought by the said Ubarri which is referred to in said paragraph XV.

Defendant further admits the facts of said paragraph XV as far as they relate to the cutting of wood from said estate called Monte Rey and the prosecution and the arrest of said Concepción Laborde; but this defendant denies all other facts and matters contained in said paragraph and specifically so that the said property ceased to be productive because of said attachment levied by said Ubarri.

XIV.

This defendant admits that Francisco de P. Acuña was the leading counsel for said Pablo Ubarri Capetillo in the transaction of his legal matters; but denies all other facts and matters contained in said paragraph XVI of the said complaint.

XV.

This defendant on information and belief admits the allegations contained in paragraph XVII of said complaint.

XVI.

That according to his information and belief he denies each and every allegation contained in paragraph XVIII of said complaint.

XVII.

This defendant denies each and every allegation contained in paragraph XIX of the said complaint.

93 XVIII.

Admits each and every allegation and matter contained in paragraph XX of the said complaint.

XIX.

This defendant admits the allegations contained in paragraph XXI in so far as it relates to the conveyance and transfer of said property; but denies the fraud alleged to be committed by said Ubarri in the transactions he entered into.

XX.

And this defendant by way of defense further alleges that the properties belonging to the estate or Succession of Jacinto Lopez which the said Pablo Ubarri Capetillo acquired as aforesaid, were so acquired at the just and fair valuation thereof; and that no manipulations, fraud or conspiracy was ever practiced by the said Pablo Ubarri Capetillo before, on or after the acquisition of same tending to facilitate it or to render the value thereof to be less than its actual price; and that the conveyance entered into and made of said properties by said Pablo Ubarri Capetillo were certain and real for a valuable and real consideration, and with no fraudulent intent.

XXI.

This defendant further alleges that the cause of action of the above plaintiffs is barred by virtue of the prescriptions of Sections 1862 and 1865 and subdivision 2 of Section 1869 of the actual Civil Code of Porto Rico, corresponding to Sections 1961 and 1964 and to subdivision 2 of Section 1968 of the Old Civil Code of Porto Rico.

Wherefore this defendant prays that the said complaint be dismissed with costs.

J. TEXIDOR,
SALVADOR SUAU,
Attorneys for Defendant Ventura Ubarri.

94 SALVADOR SUAU being duly sworn says as follows: 1. I am one of the attorneys for the defendant Ventura Ubarri in this action.

2. That I have read the foregoing answer and know the contents thereof, and that the same is true of my own knowledge, except as to those matters therein stated on the information or belief and as to those matters I believe it to be true.

3. The reason this verification is not made by the defendant in person is that he is absent in the Kingdom of Spain which is the place where he resides.

SALVADOR SUAU.

Subscribed and sworn to before me, this 13th day of November, 1906.

[NOTARIAL SEAL.] L. ABELLA BLANCO,
Notary Public.

To the above named plaintiffs or their attorney, Willis Sweet:

Please take notice of the filing of this answer in the above entitled case, this the 13th day of November 1906.

J. TEXIDOR,
SALVADOR SUAU,
Attorneys for Defendant Ventura Ubarri.

Sweet, Rossy & Campillo.

95 *Journal Entry.*

November 30, 1906.

JACINTO LOPEZ LABORDE ET AL.
vs.
SUCCESSORS OF PABLO UBARRI, Deceased.

Now comes F. H. Dexter, attorney for defendant Rufino Ubarri and files a stipulation of the parties hereto granting said defendant until the 10th day of December to plead to the complaint herein, and to the plaintiffs until the 17th day of December to file any pleadings thereto which they may desire.

96 *Stipulation Extending Time.*

(Filed November 30, 1906.)

JACINTO LOPEZ LABORDE ET AL.
vs.
PABLO UBARRI Y CAPETILLO ET AL.

Stipulation.

It is hereby mutually agreed by and between the plaintiffs and the defendant Rufino Ubarri, that the latter may have until the 10th day of December to plead to the complaint herein, and that the plaintiffs may have until the 17th day of December to file any pleadings thereto which they may desire.

San Juan, Porto Rico, November 30th, 1906.

SWEET, ROSSY & CAMPILLO,
Attorneys for Plaintiffs.
F. H. DEXTER,
Attorney for Defendant Rufino Ubarri.

97 *Journal Entry.*

December 10, 1906.

JACINTO LOPEZ LABORDE ET AL.
vs.
SUCS. DE PABLO UBARRI, Deceased.

The motions to dismiss as to Pablo Ubarri, and to dissolve the attachment herein as to him, came on to be heard, F. H. Dexter ap-

pearing for said motions on behalf of Pablo Ubarri, and Willis Sweet on behalf of the plaintiffs, and upon the request of the plaintiffs by their said attorney the matter is continued until Wednesday, the 12th instant at two o'clock P. M.

Journal Entry.

December 12, 1906.

JACINTO LORENZO LOPEZ LABORDE ET AL.
vs.
PABLO UBARRI Y CAPETILLO ET AL.

Judgment.

Now on this 12th day of December, in open Court appeared the plaintiffs by their attorney Willis Sweet, the defendants Pablo Ubarri é Yramategui and Modesta Ubarri appeared specially by their attorney Francis H. Dexter. Upon a consideration of the motion to dismiss this case as to the said defendants Pablo Ubarri é Yramategui and Modesta Ubarri, for lack of jurisdiction of this court over
98 the persons of said defendants, and of the motion to dissolve the attachment herein, and after hearing the arguments of counsel, and after having duly considered all of the same, and in pursuance of the ruling heretofore made in the case of Fernandez *vs.* Alcalá del Olmo, the Court hereby

Orders and Adjudges that this case and the complaint herein be dismissed as to said defendants Pablo Ubarri é Yramategui and Modesta Ubarri, and that the attachment heretofore issued against any property of the said defendants and as to the interest of the said defendants in any of said properties is hereby dissolved. If the said attachment has been annotated in the Registry of Property the Registrar of Property shall cancel the same. Said defendants are therefore, dismissed from this action and awarded their costs.

The plaintiffs except to the dismissal as to Pablo Ubarri and Modesta Ubarri and the dissolving of the attachment.

99 *Reply.*

(Filed December 15, 1906.)

At Law.

JACINTO LORENZO LOPEZ LABORDE ET AL.
vs.
PABLO UBARRI É YRAMATEGUI ET AL.

Now come the plaintiffs in the above entitled action, and for reply to the answer herein filed deny each and every material allegation

therein contained which is not an admission of the allegations set forth in the amended complaint herein filed.

WILLIS SWEET,
Attorney for Plaintiffs.

To the above named defendants or their attorneys Salvador Suau y Jacinto Dexidor:

Please take notice of the filing of this reply in the above entitled cause this 15th day of December, 1906.

WILLIS SWEET,
Attorneys for Plaintiffs.

100 *Motion of Rufino Ubarri to Dismiss the Bill of Complaint Herein and the Cause for Want of Jurisdiction of the Court.*

(Filed December 27, 1906)

JACINTO LOPEZ LABORDE ET AL.
vs.
RUFINO UBARRI ET AL.

Motion of Rufino Ubarri to Dismiss the Bill of Complaint Herein and the Cause for Want of Jurisdiction of the Court to Try the Same.

Defendant Rufino Ubarri in the above entitled cause by his Solicitor Francis H. Dexter, appears for the purpose of objecting to the jurisdiction of this Court, to try this cause and for grounds hereof says:

That he was born in the Island of Porto Rico, in the year 1861, that during all of the time intervening since said date he has been and still is a resident of Porto Rico, residing therein with the exception of the time occupied or expended in several trips which he has made to Spain.

Defendant says, that desiring and intending to be and remain a citizen of Porto Rico after the American occupation, and after the signing of the Treaty of Peace, between Spain and the United States of America, he refrained from making before a Court of Record or before any other tribunal or consulate within a year from the date of the exchange of the ratifications of the treaty of peace, a declaration of his intention to preserve his allegiance to the Crown of Spain.

In default of such action he has renounced his allegiance and adopted the nationality of the territory of Porto Rico in which he resides, and became and is under the said Treaty and the laws of the United States a Citizen of Porto Rico.

101 Wherefore he prays that the Bill of Complaint be dismissed for the reason that the Court is without jurisdiction over this cause or the parties hereto.

F. H. DEXTER,
Solicitor for Defendant Rufino Ubarri.

Rufino Ubarri é Yramategui, being duly sworn upon his oath, says: That the matters and facts set forth in the foregoing motion are true.

—— ——.

Subscribed and sworn to before me this — day of Dec. 1906.

—— ——,

Notary Public.

Francis H. Dexter, being duly sworn upon his oath says: That he is the solicitor for defendant Rufino Ubarri: that the demurrer heretofore filed by him in behalf of said defendant Rufino Ubarri was prepared without knowledge upon his part of the facts above set forth, and under the belief that said defendant Rufino Ubarri was and is a subject of the Kingdom of Spain,—this affiant being without any positive information at the time as to the actual facts.

F. H. DEXTER.

Subscribed and sworn to before me this — day of December 1906.

—— ——.

To the above named complainants or to Willis Sweet, Esq., their solicitor:

You will please take notice that the foregoing motion has been filed in the above entitled cause and that the same will be called up for hearing at the opening of the Court on the — inst., or as
102 soon thereafter as will suit the convenience of the Court or counsel.

San Juan, P. R. December 26th, 1906.

—— ——.

Service of copy of the foregoing motion acknowledged this — day of Dec. 1906.

The facts above set forth are admitted.

—— ——,

Solicitor for Complainants.

103 *Journal Entry.*

December 21, 1906.

JACINTO LORENZO LOPEZ LABORDE ET AL.
vs.
BUENAVENTURA UBARRI ET AL.

Now, upon motion of Willis Sweet, one of the attorneys for the plaintiffs herein, the attachment heretofore levied upon the property No. 1244, being in the barrio of Santurce, municipality of San Juan, is released, and the Marshal directed to notify the Registrar of Property in order that the annotations on his record may be cancelled.

104 *Journal Entry.*

January 4, 1907.

JACINTO LORENZO LOPEZ LABORDE ET AL.
vs.
RUFINO UBARRI ET AL.

The motion of Rufino Ubarri, one of the defendants herein, to dismiss this cause for want of jurisdiction came on to be heard. F. H. Dexter, solicitor for said defendant appears in behalf of said motion and Willis Sweet and H. F. Hord solicitors for plaintiffs in opposition thereto, and upon the conclusion of the arguments said motion is submitted and briefs to be filed by respective counsel.

105 *Special Appearance of Pablo Ubarri by His Attorney for the Purpose of Moving for an Order Dissolving the Attachment.*

(Filed February 25, 1907.)

SUCESION DE LOPEZ LABORDE
vs.
RUFINO UBARRI ET AL.

The undersigned Francis H. Dexter appears specially in the name and in behalf of Pablo Ubarri é Yramategui, who was made a defendant in this cause but over whose person this Court has not acquired jurisdiction. And for the purpose only of this motion represents to this Court, that, heretofore an order of attachment was issued out of this Court and served upon certain properties of the said Pablo Ubarri é Yramategui in this district, among which is the estate known as Quebrada Lajas.

Subsequent thereto this Court dismissed the complaint as to the said Pablo Ubarri é Yramategui, and although a petition for a writ of error was allowed and a bond for costs filed for the purpose of prosecuting such writ of error to the Supreme Court of the United States, no supersedeas bond has been given nor has the law been complied with to enable plaintiffs to obtain the benefit of a supersedeas upon said judgment of dismissal.

Wherefore the undersigned appearing specially as aforesaid prays that this Court issue an order requiring the Registrar of Property to release from the record the attachment aforesaid upon said estate Quebrada Lajas.

San Juan, P. R. February 23, 1907.

F. H. DEXTER,
Appearing Specially as Aforesaid for Pablo Ubarri.

To Messrs. Sweet, Rossy & Campillo, Attorneys for Plaintiffs:

Please take notice that I have this day filed in Court the foregoing motion and that the same will be presented on Monday the 25th instant, or as soon thereafter as counsel can be heard.

F. H. DEXTER,
Appearing Specially as Aforesaid for Pablo Ubarri.

Service accepted this 2d day of February, 1907.

____ ____,
Attorneys for Plaintiffs.

106 *Order Releasing the Estate Quebrada Lajas, the Property of Pablo Ubarri, from the Attachment Heretofore Issued Herein.*

(Filed February 25, 1907.)

SUCESION DE LOPEZ LABORDE
vs.
PABLO UBARRI ET AL.

On this 25th day of February 1907, in open Court, appeared Francise H. Dexter, specially for and in behalf of Pablo Ubarri Yramategui, who was made formerly a defendant in this cause, but as to whom the complaint herein has been dismissed, and for the purpose only of presenting a motion for an order requiring the Registrar of Property to release from the lien of an attachment heretofore issued in this case the estate known as Quebrada Lajas in this district, the property of said Pablo Ubarri Yramategui.

Upon a consideration of the said motion and it appearing to the Court that, plaintiffs are not entitled to the benefit of a supersedeas as to the said judgment of dismissal, the time having elapsed within which said supersedeas might be obtained.

It is hereby ordered That, the Registrar of Property cancel and release from the lien of the attachment issued heretofore on the 12th day of September, 1906, in this cause the estate Quebrada Lajas, situated in the wards of Mediania Alta y Mediania Baja, of the town of Herrera y Ciénega Baja, places called Mimunimi, Pabon & Quebrada Bajas, in the district of Rio Grande and Loiza, composed of 2,002-57 acres more or less, or such part thereof as is inscribed in the name of the said Pablo Ubarri Yramategui.

B. S. RODEY, *Judge.*

107 *Journal Entry.*

April 2, 1907.

JACINTO LORENZO LOPEZ LABORDE ET AL.
vs.
PABLO UBARRI YRAMATEGUI ET AL.

The Court hands down an opinion herein sustaining the motion of Rufino Ubarri to dismiss this cause as to him, and it is ordered that he be dismissed from this suit with his costs.

Journal Entry.

April 2, 1907.

JACINTO LORENZO LOPEZ LABORDE ET AL.
vs.
PABLO UBARRI YRAMATEGUI ET AL.

Set for trial on April 12th.

108 *Motion to Dismiss for Want of Indispensable Parties and no Cause of Action Shown.*

(Filed April 8, 1907.)

JACINTO LOPEZ LABORDE ET AL.
vs.
PABLO UBARRI YRAMATEGUI ET AL. as the Sucesion de Pablo Ubarri.

Now comes the defendant herein, Buenaventura Ubarri, and moves the court to dismiss the action herein for lack of indispensable parties since it appears of record that all of the other defendants composing the said Sucesion of Pablo Ubarri have been dismissed from the said cause because of one cause or other whereby this court has no jurisdiction over them, and further because the complaint does not state facts sufficient to constitute a cause of action.

J. TEXIDOR,
SALVADOR SUAU,
Attorneys for Buenaventura Ubarri.
WM. H. HAWKINS,
Of Counsel.

109 *Journal Entry.*

April 9, 1907.

JACINTO LORENZO LOPEZ LABORDE ET AL.
vs.
SUCCESSORS OF PABLO UBARRI, Deceased.

W. H. Hawkins enters his appearance as co-counsel for the defendant Buenaventura Ubarri.

Journal Entry.

April 13, 1907.

JACINTO LORENZO LOPEZ LABORDE ET AL.
vs.
SUCESIÓN DE PABLO UBARRI, Deceased.

The motion of Buenaventura Ubarri to dismiss this case for want of necessary parties is heard and submitted.

110 *Amended Complaint.*

(Filed April 15, 1907.)

JACINTO LOPEZ LABORDE ET AL.
vs.
BUENAVENTURA UBARRI YRAMATEGUI ET AL.

Whereas in the above-entitled cause the defendant Buenaventura Ubarri Yramategui has filed a separate answer in which it is averred that by virtue of the prescription laws of Porto Rico said action is as to him prescribed and should be dismissed; and

Whereas the Honorable Judge of the above entitled court deeming advisable to settle in advance this question, because in the interest of time and economy a trial by jury might be commenced and progress for some time and then be dismissed by reason of said allegation of prescription being proved; and

Whereas the said Honorable Judge called a conference of all of the counsel on both sides in said cause to assemble in his Chambers at San Juan on Saturday 13th April, 1907, at the hour of 1.30 of said day; and

Whereas, said question was then and there fully discussed and presented to said Honorable Judge for the information of all concerned; and

Whereas, it being within the power of complainants to present such amendments to said complaint as to obviate a mistrial of said cause because of said allegation;

Now at this time, permission of the Court being first had and obtained, the complainants amend said complaint by adding to the last paragraph of allegation in said complaint numbered I
111 the following statement. The said defendant Buenaventura Ubarri has not resided in the island of Porto Rico to exceed the period of three years at any one time, or at different times all combined from the year 1889, the date of the year in which this action accrued, until the commencement thereof, or the present date.

Whereupon complainants invoke sections 1859 *et seq.* C. Code and also section 39 of the present law of civil procedure of Porto Rico, which exclude from the time of prescription the absence of the defendant from the Island of Porto Rico.

Wherefore the complainants pray that as to the defence of prescription urged by said Buenaventura Ubarri Yramategui that said answer be stricken from the file.

SWEET, ROSSY Y CAMPILLO,
Attorneys for the Complainants.

UNITED STATES OF AMERICA,
District of Porto Rico, ss:

Jacinto Lopez Laborde being duly sworn says: I have had read the foregoing amendment to the complaint of plaintiffs herein, and

know the facts therein stated and the same are true of my own knowledge.

J. LOPEZ LABORDE.

Subscribed and sworn to before me this 15th day of April, 1907.
[NOTARIAL SEAL.]

LUIS CAMPILLO,
Notary Public.

112 *Journal Entry.*

April 15, 1907.

JACINTO LORENZO LOPEZ LABORDE ET AL.
vs.
BUENAVENTURA UBARRI.

Now come the plaintiffs herein by their attorney Willis Sweet and present an amendment to their complaint, and the same is permitted to be filed, subject to any objection which the defendant may desire to make during the progress of the trial of this suit.

Thereupon the Court overrules the motion to dismiss this cause for lack of necessary parties, to which the defendant excepts.

Upon the call of the case for trial both parties by their respective attorneys, Willis Sweet for the plaintiffs, and W. H. Hawkins, J. Texidor and Salvador Suau for the defendants answer ready for trial. Thereupon comes a Jury duly impaneled and sworn to try the issues herein, composed of the following named persons, to wit: Francisco Sánchez Morales, José Clivillés, Robert Graham, Gervasio Gandía, G. S. Lathrop, Arturo Cortada, W. P. Packhurst, Isidoro Deldado, F. C. Vail, W. H. Coonan, John A. Wilson, and H. W. Vodra.

Journal Entry.

April 16, 1907.

JACINTO LORENZO LOPEZ LABORDE ET AL.
vs.
BUENAVENTURA UBARRI.

Resumed. The Jury hears a portion of the testimony on behalf of the plaintiffs.

113 *Journal Entry.*

April 17, 1907.

JACINTO LORENZO LOPEZ LABORDE ET AL.
vs.
BUENAVENTURA UBARRI.

Resumed. The Jury hears the conclusion of the testimony on behalf of the plaintiffs, whereupon the defendant moves for peremp-

tory instructions to the Jury, for a verdict in his favor which said motion is heard and overruled, to which defendant excepts. Whereupon the Jury hears all the testimony for the defendant.

Journal Entry.

April 18, 1907.

JACINTO LORENZO LOPEZ LABORDE ET AL.
vs.
BUENAVENTURA UBARRI.

Resumed. The Jury hears the argument of counsel and charge of the Court and retires.

Journal Entry.

April 19, 1907.

JACINTO LORENZO LOPEZ LABORDE ET AL.
vs.
BUENAVENTURA UBARRI.

Now comes the Jury herein and returns the following verdict, to wit:

114 "We, the jury, find for the plaintiffs and assess their damages in the sum of $99,000.

H. W. VODRA, *Foreman.*"

Whereupon it is considered and adjudged by the Court that said plaintiffs Jacinto Lorenzo Lopez Laborde, María Consolación Lopez Laborde, Manuel Demetrio Lopez Laborde, Enrique Lopez Laborde, and María Concepción Graxiana Lopez (by her grandmother Concepcion Laborde), and Francisca Luisa Lopez Laborde, do have and recover of and from the defendant Buenaventura Ubarri Yrarrategui of the Succession of Pablo Ubarri y Capetillo, the sum of Ninety-nine Thousand Dollars with interest from this date, and their costs herein laid and expended, for which let execution issue.

Journal Entry.

April 22, 1907.

JACINTO LORENZO LOPEZ LABORDE ET AL.
vs.
BUENAVENTURA UBARRI.

Now comes the defendant herein, by W. H. Hawkins, one of his attorneys of record, and files a motion for a new trial.

115 *Motion for New Trial.*

(Filed April 22, 1907.)

JACINTO LOPEZ LABORDE ET AL.
vs.
PABLO UBARRI YRAMATEGUI ET AL.

And now comes the defendant Buenaventura Ubarri and moves that the verdict herein rendered be vacated and a new trial ordered for the following reasons:

First. Said verdict was not sustained by sufficient evidence.

Second. There was no testimony tending to sustain the verdict.

Third. Said verdict was contrary to law.

Fourth. The court erred in refusing to instruct the jury to render a verdict for the defendant, because:

(*a*) The cause of action had been prescribed by law (civil code § 1869-2) more than one year having elapsed since the cause of action arose.

(*b*) The cause of action had been prescribed by law (civil code § 1865) more than fifteen years having elapsed since the cause of action arose.

(*c*) The cause of action attempted to be proved does not survive by law as against the heir or heirs of the wrong-doer.

(*d*) No cause of action was proved or established against the defendant.

(*e*) The cause of action attempted to be proved was a collateral attack upon a judgment of a competent tribunal in a suit between the parties, and was *res adjudicata*.

(*f*) And for other errors of law.

116 Fifth. The court erred in denying the motion of the defendant for want of indispensable parties and no cause of action shown, because:

(*a*) The action had prescribed as set forth above under Fourth (*a*) and (*b*).

(*b*) Non-survival of the action attempted to be proved as against the heir or heirs.

(*c*) One of the heirs composing a succession is not liable for the whole of an obligation of the ancestor arising *ex delicto*.

(*d*) And for other errors of law.

Sixth. The Court erred in certain particulars of its general charge to the jury excepted to by the defendant.

Seventh. The court erred in refusing certain of the defendant's special charges No. — requested by defendant.

Eighth. There were other errors of law prejudicial to the defendant.

WM. H. HAWKINS,
Counsel for Defendant Buenaventura.

117 *Journal Entry.*

May 1, 1907.

JACINTO LORENZO LOPEZ LABORDE ET AL.
vs.
BUENAVENTURA UBARRI.

The motion for a new trial herein came on to be heard, F. H. Dexter and W. H. Hawkins representing the defendant in support thereof and Willis Sweet and Luis Campillo representing the plaintiffs in opposition thereto, and the same is submitted with leave to the counsel for defendant to file a brief on or before the 6th instant.

118 *Defendant's Exceptions to the Charge of the Court.*

(Filed May 1, 1907.)

JACINTO LOPEZ LABORDE ET AL.
vs.
BUENAVENTURA UBARRI.

Counsel for defendant make a general objection to the charge as given and except to the same for the reasons heretofore expressed by them in the motion to dismiss and the motion to find for the defendant.

Defendant excepts to that part of the charge reading as follows:

"The prayer of the complaint asks judgment against the succession for damages which they estimate and lay at $156,750 (American dollars), with interest thereon from whatever date in the year 1889 the evidence has shown you that their cause of action, if any they have, accrued."

The particular objection made to this part of the charge is that it is in effect a declaration by the Court to the jury that if any cause of action accrued at all, it accrued in the year 1889, whereas, under the evidence in the case, if any cause of action accrued, it would have accrued under the laws of the land prior to 1889 and subsequent to the death of Jacinto Lopez Laborde.

Defendant further excepts to that part of the charge which reads:

"But the Court instructs you, as it is presumed, because the defendants have not shown the contrary, that these defendant heirs took the estate of their father, the said Pablo Ubarri y Capetillo, without benefit of inventory, and hence became liable for all the debts which that estate owed, and therefore service upon one of them is sufficient to authorize the Court to give a judgment against the succession for whatever amount, if any, you may, in your discretion, find to be due."

Counsel for defendant claim that as a matter of law no such presumption exists, as stated by the Court.

And further that the Court has erred in referring to *these*
119 defendants, since there is but one defendant, Buenaventura Ubarri, before the Court. And to submit this charge to the jury in this manner and form, together with the statement by the Court that service upon one of them (referring to all the heirs) is sufficient to authorize the Court to give a judgment against the succession for whatever amount they may in their discretion find to be due, is in effect authorizing the jury to render a verdict against all of the members composing the succession or estate of Pablo Ubarri y Capetillo, when by the records of this court and the statement of Your Honor, three of the heirs are not within the jurisdiction of this court.

Counsel further say that in the absence of such other heirs, plaintiffs cannot recover a judgment upon the alleged cause of action set forth in the complaint.

Counsel for defendant further except to the charge of the Court in that in various places, reference is made to defendants in the plural, for the reason that in effect the charge of the Court submits to the jury the possible liability of all of the heirs of Pablo Ubarri y Capetillo as such, although they are not in court or within the jurisdiction of this court,—thus leaving the case go to the jury in such a manner that they may find and render a verdict as against this defendant for the entire possible liability of all the heirs.

Counsel for defendant further except to that part of the charge of the Court beginning with the words: "Notwithstanding, gentlemen, that there is evidence in the cause tending to show the tremendous power and influence that this man Pablo Ubarri had over officials," and ending with the words: "may be taken into consideration in determining, in connection with the other evidence in the case, whether or not such wrongdoing was brought about by his wrongful influence, if any."

Counsel believe that this part of the charge is erroneous
120 in that it leaves the jury to infer that the mere efforts of Pablo Ubarri y Capetillo to collect his debt of seventeen thousand pesos, which confessedly was due to him, was wrongful because he had or might have had in mind ultimately obtaining possession of the property of plaintiffs.

There can be no wrong in availing one's self of legal means and methods to recover a debt and to make the processes of the court effective. Counsel believe that the language of the Court last excepted to, presents to the jury the obligation or liability of Pablo Ubarri y Capetillo or of his heirs, if any, in such a vague and general manner as to give the jury an erroneous notion of what constitutes liability in the given case and also leaves them free to adopt standards and ideas not supported by law.

Defendant further excepts to that part of the charge which states: "their only remedy (referring to the plaintiffs) is the one they are asking here in this suit, that is, a judgment against the estate for the amount of their damages."

As stated continuously and consistently herein by counsel for defendant, the action as it now stands is not an action against the

estate of Pablo Ubarri y Capetillo, since by the records and the action of the Court, four of the heirs composing the succession are not before the Court and no judgment can be rendered in this court against the estate or succession as such.

Defendant further excepts to that part of the charge which says: "the only question for your consideration is whether or not, after the said Ubarri got his judgment against the estate of the father of these plaintiffs, he collected the sum due him, in an oppressive manner and col-ected in fact more than was due him."

Counsel insist that this language is too vague and indefinite and leaves the jury too wide a latitude or too much freedom in determining what is or was the legal liability. The term "oppress-
121 ive manner" does not express in legal terms any such wrongful conduct on the part of Pablo Ubarri y Capetillo as would in law make him or his heirs liable.

Counsel for defendant except to that part of the charge which reads:

"If you do not believe by a preponderance of the evidence that Pablo Ubarri by undue influence, fraud and oppression did so deprive these people of their property, you must find for the defendants."

This part of the charge is excepted to for the reasons last above stated, that the employment of general legal terms, such as undue influence, fraud and oppression, does not adequately or properly submit to the jury the facts upon which the law might create a liability.

We believe that Your Honor should more definitely indicate to the jury the facts which, under the evidence herein, might in law constitute such alleged undue influence, fraud and oppression, from which the liability of this defendant might be determined.

The defendant further excepts to the refusal of the Court to charge Nos. two, three, four, five and seven of the charges requested by the defendant, in as much as they were not clearly, or even in substance, included in the general charge of the Court.

122 *Affidavit as to New Evidence Offered in Support of the Motion for a New Trial.*

(Filed May 10, 1907.)

Naw. No. 386.

SUCCESSION OF LOPEZ LABORDE
vs.
BUENAVENTURA UBARRI.

Defandant Buenaventura Ubarri, by his attorneys, says that for the purposes of his motion for a new trial heretofore filed, he submits the following material evidence which was not within his knowledge or at his command at the time of the trial of this cause.

and which he could not have obtained or been aware of by the exercise of reasonable diligence. The said facts are:

First. A public document executed by Jacinto Lopez, in which he declared that all of his property was worth but ninety thousand pesos, money current at the time, this document having been made a few years prior to his death, and it included the property referred to in this suit.

Second. Defendant has also found since the trial of this case, documents which show that plaintiffs herein, the heirs of the said Jacinto Lopez, accepted the division of the estate of said Jacinto Lopez and freely and voluntarily accepted the estate in the condition in which it was at the time, to wit, after the death of the said Jacinto Lopez; and that the said heirs transferred some of the property formerly belonging to their father Jacinto Lopez, to Pablo Ubarri y Capetillo.

Third. Documents which show that in connection with the sale of the real estate of Jacinto Lopez, which is referred to in the complaint, it was sold in various parcels and upon different occasions at public auction, and in which all the formalities of the law were complied with.

123 Fourth. That the property described in the complaint herein as formerly belonging to Jacinto Lopez, was sold to Mr. A. L. Arpin and other persons since the American occupation at a price a great deal less than the value testified to by witnesses for plaintiffs on the trial of this case.

HILARIO CUEVILLAS &
F. H. DEXTER,
Attorneys for Buenaventura Ubarri.

F. H. Dexter being duly sworn, deposes and says that from the information received by his associate Don Hilario Cuevillas, he makes affidavit to the foregoing facts, believing the same to be true.

F. H. DEXTER.

Subscribed and sworn to before me this 10th day of May, 1907.
H. H. SCOVILLE, *Clerk.*

124 *Journal Entry.*

June 22, 1907.

JACINTO LORENZO LOPEZ LABORDE ET AL.
vs.
BUENAVENTURA UBARRI.

The Court hands down an opinion herein and in accordance therewith the motion for a new trial is overruled, to which the defendant excepts.

125 *Opinion Denying Motion for New Trial.*

(Filed June 22, 1907.)

JACINTO LOPEZ ET AL.
vs.
BUENAVENTURA UBARRI.

Opinion and Statement Denying a Motion for a New Trial.

The matter of this Ubarri estate in different phases has taken about one-third of the time of this Court since the present incumbent of the bench arrived on the Island a year ago, and we do not know how much time it took theretofore.

The defendants, while they no doubt have a legal right to do so, have strenuously resisted every effort to get them into court either by personal or substitute service, by all sorts of motions and allegations. One portion of the family, after American occupation, remained Spaniards, went to Spain and are now living there, and it is alleged in the pleadings in another suit that they have studiously avoided the process of this court by stopping at the Danish Island of St. Thomas when they were forced to attend to business in Porto Rico and then send powers of attorney from there to Porto Rico in an effort to have their property transferred so as to avoid the process of this court. Another member of it, at a late date in the litigation, came in and alleged himself to be a Porto Rican so as to oust the jurisdiction, and made such showing as to force the Court to so hold. Finally, in this particular suit a trial was had and a verdict rendered by the jury. Thereafter then defendants substituted their counsel, and filed this motion in arrest, and for a new trial, going over the entire ground that the Court has been over already two or three times.

126 It would not be profitable for us to write another long opinion in this case, because the case itself is of such importance as that probably no matter which side wins here, it will be taken to the Supreme Court, and as there are grave questions of law involved in it, and although we have grave doubts as to some of the points, we have so far decided enough of them for the plaintiffs to keep them in court, we think it quite as well that the Supreme Court of the United States should pass upon them so that the whole matter will be settled.

Were this a constitutional circuit court of the United States, with more than one judge on the bench, they might certify a division of opinion in an important case like this to the Supreme Court; we have no such privilege here, and not feeling that we would change our opinion did we go over the matter again, and further because our time before vacation is short, and realizing that the matter will be fully presented by both sides in the court above, the motion for a new trial will be denied, and it is so ordered.

B. S. RODEY, *Judge.*

127 *Petition for Writ of Error.*

JACINTO LORENZO LOPEZ LABORDE ET AL.
vs.
BUENAVENTURA UBARRI É YRAMATEGUI.

To the Honorable Bernard S. Rodey, Judge of the District Court of the United States for Porto Rico, San Juan, Porto Rico.

SIR: Buenaventura Ubarri, Defendant in the above-entitled cause, feeling himself aggrieved by the verdict of the jury and the judgment entered herein on the 19th day of April, 1907, comes now, by Hilario Cuevillas and Francis H. Dexter, his attorneys, and petitions said Court for an Order allowing him to prosecute a Writ of Error to the Supreme Court of the United States, under and according to the laws of the United States in that behalf made and provided. And your petitioner will ever pray.

HILARIO CUEVILLAS,
F. H. DEXTER,
Attorneys for Defendant.

128 *Assignment of Error.*

(Filed June 22, 1907.)

JACINTO LORENZO LOPEZ LABORDE ET AL.
vs.
BUENAVENTURA UBARRI É YRAMATEGUI.

Now comes the undersigned, Buenaventura Ubarri é Yramategui, Plaintiff in Error in the above-entitled cause, and presents this, his, Assignment of Error, upon which he relies for a reversal of the judgment rendered herein:

I.

The Court erred in overruling the demurrer of the Defendant, Buenaventura Ubarri.

II.

The Court erred in denying the motion of the defendant, Buenaventura Ubarri made before beginning of the trial, to dismiss the cause for want of indispensable parties after the Court by its order had dismissed from the case the original Defendants, Pablo Ubarri é Yramategui, Modesta Ubarri é Yramategui, and Rufino Ubarri é Yramategui, which said motion was further based on the fact that the Complaint herein does not state facts sufficient to constitute a cause of action in favor of Plaintiffs.

III.

The Court erred in permitting the Plaintiff, Jacinto Lopez y Laborde, to testify as to the value of the properties in question in the

suit, the testimony of said plaintiff being hearsay and based upon statements made by the mother of the Plaintiff and from the contents of a certain testamentary proceedings, and because the Court erred in not sustaining the motion of Counsel for Buenaventura Ubarri to strike out the testimony of said Plaintiff in this record.

IV.

Because the Court erred in admitting the Plaintiff, Jacinto Lopez, to testify concerning the contents of a letter, which he testified
129 to having written, at the request of his mother, to Pablo Ubarri y Capetillo, and in admitting a copy of such letter made by Plaintiff to prove the contents of the original.

V.

Because the Court erred in overruling, at the end of the Plaintiff's case, the motion made by Defendant, Buenaventura Ubarri, for a peremptory verdict in favor of Defendant, or an involuntary nonsuit, for the following reasons:

(*a*) That a sufficient case has not been made out for the Plaintiffs to go to the jury under all of the evidence.

(*b*) The Plaintiff's case shows that prescription has run.

(*c*) Because this Defendant is only one of the heirs, and there is nothing in the evidence showing how a judgment should be apportioned, or that the Defendant is liable *in solido*.

(*d*) Because the cause of action set forth, and which the evidence tends to prove, does not survive as against the heirs or against this Defendant.

(*e*) Because of the lack of indispensable parties, to wit: Pablo Ubarri é Yrarrategui, Modesta Ubarri é Yrarrategui, Rufino Ubarri é Yrarrategui, and José María Ubarri é Yrarrategui, who together with Defendant constitute the Sucesión of the estate of Pablo Ubarri y Capetillo.

(*f*) Because the Plaintiffs in establishing their case make a collateral attack upon a judgment of a proper and competent court.

VI.

Because the Court erred in refusing to give the following instructions, No. 1, requested by Defendant. The burden of the proof is upon the Plaintiffs to establish, to a reasonable extent, that the taking of the property in question was wrongful and that said wrong was done by, or caused to be done by, Pablo Ubarri.

VII.

Because the Court erred in refusing Instruction No. 2, asked for by Defendant, as follows:
130 There is no presumption from the fact that Pablo Ubarri was a powerful and influential man that he exercised such power or influence in committing said wrong.

VIII.

Because the Court erred in refusing Instruction No. 3, asked by Defendant, as follows:

There is not sufficient proof to establish, even inferentially, that Pablo Ubarri exercised his power or influence in wrongfully using the process of the courts.

IX.

Because the Court erred in refusing Instruction No. 4, asked by Defendant, as follows:

Even if the jury find, as a matter of fact that Pablo Ubarri exercised his power and influence to remove judges, and used the process of the courts for his own benefit, the jury cannot legitimately infer that he exercised such power and influence in this case unless there is direct evidence to that effect.

X.

Because the Court erred in refusing Instruction No. 5 of Defendant, as follows:

If the jury should find that there was any wrong committed on the part of any officers of the Court in using the judicial process, Pablo Ubarri is not responsible therefor unless the jury find from the evidence that he caused the said officers to commit such acts.

XI.

Because the Court erred in refusing Instruction No. 6 of Defendant, as follows:

If the jury should find that any wrong was done, and that Pablo Ubarri was responsible therefor, the damages resulting must be assessed on the value of the property obtained at the time when the property was delivered into the possession of the said Pablo Ubarri.

XII.

Because the Court erred in refusing Instruction No. 7 of
131 Defendant, as follows:

Such damages as the jury find for cause to these Plaintiffs, if they find such to be the case, shall be assessed to the Defendant only in one-fifth (1-5) thereof.

XIII.

The Court erred in charging the jury, at the close of the case, as follows:

The prayer of Complainant asks judgment against the Sucesión for damages which they (Plaintiffs) estimate and lay at $156,750.00 American dollars, with interest thereon from whatever date in the year 1889 the evidence has shown you that the cause of action, if any they have, accrued.

XIV.

Defendant objects to that part of the charge of the Court, as follows:

But the Court instructs you, as it is presumed because Defend-

ants have not shown the contrary, that these Defendants took the estate of their father, the said Pablo Ubarri y Capetillo, without benefit of inventory, and hence became liable for all of the debts which that estate owed, and therefore service upon them is sufficient to authorize the Court to give a judgment against the Sucesión for whatever amount, if any, you may, in your discretion, find to be due.

XV.

The Court erred in referring in its said charge to "these Defendants," there being but one Defendant, Buenaventura Ubarri, before the Court at the time of the trial, the Court having no jurisdiction over the persons of the other heirs of Pablo Ubarri y Capetillo and they were not parties to this cause at the time of the trial thereof.

XVI.

The Court erred in submitting, by its charge to the jury, the case upon the theory that Defendant, Buenaventura Ubarri, was
132 liable for the whole amount of damages claimed, or the liability, if any, of the Sucesión, or of all of the heirs of Pablo Ubarri Capetillo, because of the matters and facts set forth in the complaint.

XVII.

Because the Court erred in charging the jury, as follows:

"Notwithstanding, Gentlemen, that there is evidence in the "cause tending to show the tremendous power and influence that "this man, Pablo Ubarri, had over officials, and perhaps courts "and officers of the Island of Porto Rico during his life-time, yet "unless you believe, from a preponderance of the evidence, that "he exercised such influence banefully in the levying of the exe- "cution in question you should find for the Defendants, because "under the evidence it is clear that whatever wrong, if any, he "did to this estate was done by causing it to be appraised and offered "for sale and buying it in at the tax-sales on this execution for much "less than its actual value; in other words, the wrong must have "been Ubarri's, because a wrong done by court officers as *ad* of "themselves without his influence would not bind these Defendants, "but the fact that Pablo Ubarri gained advantage, if you believe "from a preponderance of the evidence that he did from the wrongs, "if you believe there were wrongs done, may be taken into con- "sideration in determining, in connection with the other evidence "in the case, whether or not such wrongdoing was brought about "by his wrongful influence, if any.

XVIII.

Because the Court erred in charging the jury as follows:

"Their only remedy (referring to the Plaintiffs) is the one they are asking here in this suit—that is, a judgment against the estate for the amount of their damages."

XIX.

Because the Court erred in charging the jury as follows:

"The only question for your consideration is whether or not, after "the said Ubarri got his judgment against the estate of the father "of these Plaintiffs, he collected the sum due him in an oppressive "manner, and collected, in fact, more than was due him.

XX.

Because the Court erred in charging the jury, as follows:

"If you do not believe, by a preponderance of the evidence, that Pablo Ubarri, by undue influence, fraud and oppression, did so deprive these people of their property, you must find for the Defendants."

XXI.

Because the Court erred in submitting this case at all to the
133 jury, since it had no jurisdiction, either under the allegations of the Bill or under the evidence offered, to entertain the case or to render a judgment therein, since the complaint did not set forth facts sufficient to constitute a cause of action, nor did the evidence set forth a cause of action, and, further, because the cause of action, if any existed, was prescribed; and, further, because this action was not the appropriate action to obtain the relief prayed for by Plaintiff.

XXII.

Because the verdict is contrary to law, for the reasons above set forth, and because it is not justified by the evidence, and it is excessive and unconscionable.

XXIII.

Because the Court erred in entering a judgment herein in the manner it did, the same being irregular, illegal and without the power of jurisdiction of this Court to make, considering the complaint herein and the evidence offered in this case, and for the further reason that to enforce the said verdict would be a taking of property without due process of law.

XXIV.

Because the Court erred in overruling the motion for new trial filed herein, for the reasons therein set forth, which said motion was also accompanied by an affidavit as to the discovery of new evidence material to the issues herein.

Wherefore, plaintiff in Error prays that the said judgment of the District Court of the United States for Porto Rico be reversed.

HILARIO CUEVILLAS,
F. H. DEXTER,
Attorneys for Plaintiff in Error.

134 *Order Allowing Writ of Error.*

(Filed June 22, 1907.)

JACINTO LORENZO LOPEZ LABORDE ET AL.
vs.
BUENAVENTURA UBARRI É YRAMATEGUI.

On this the 22nd day of June, 1907, upon motion of Francis H. Dexter, Attorney for Defendant, and upon filing a petition for a Writ of Error and an Assignment of Errors, it is ordered that a Writ of Error be, and hereby is, allowed to have reviewed in the Supreme Court of the United States the judgment heretofore entered herein, and that the amount of the bond for costs be fixed in the sum of $500.

B. S. RODEY, *Judge.*

135 *Bond on Writ of Error for Costs.*

(Filed June 29, 1907.)

JACINTO LOPEZ LABORDE ET AL.
vs.
BUENAVENTURA UBARRI.

Know all men by these presents: That we, Buenaventura Ubarri, as Principal, and Joaquin Matienzo a-d José Rosado, as Sureties, are held and firmly bound unto Jacinto Lorenzo Lopez Laborde; María Consolación Lopez Laborde; Manuel Demetrio Lopez Laborde; Enrique Lopez Laborde; María Concepción Graxiana Lopez Laborde; Francisca Luisa Lopez Laborde, in the full and just sum of Five Hundred Dollars ($500.00), to be paid to the said persons last named their executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Whereas, lately, at a session of the District Court of the United States for Porto Rico, in a suit pending in said Court between the said Jacinto Lopez, *et al.*, Plaintiffs, and Buenaventura Ubarri, Defendant, a final judgment was rendered against the said Defendant, and the said Defendant having obtained from said Court a Writ of Error to reverse the judgment in the aforesaid suit and a citation directed to the said Jacinto Lopez Laborde, *et al.*, above-named, is about to be issued citing and admonishing them to be and appear at the Supreme Court of the United States within sixty (60) days from the date thereof.

Now, the condition of the above obligation is such that if the said Buenaventura Ubarri shall prosecute his Writ of Error to effect and shall answer all damages and costs that may be awarded
136 against him if he fails to make good his plea, then the above obligation to be void, otherwise to remain in full force and effect.

San Juan, Porto Rico, June 25 de 1907.

BUENAVENTURA UBARRI.
pp. JOAQUIN MATIENZO.
JOAQUIN MATIENZO.
JOSÉ ROSADO.

Joaquin Matienzo and José Rosado, Sureties on the above bond, being duly sworn, upon their oath say that they are, respectively, worth more than double the amount of the foregoing bond in property subject to execution in Porto Rico and in excess of all legal exemptions.

JOAQUIN MATIENZO.
JOSÉ ROSADO.

Subscribed and sworn to before me this 28th day of June, 1907.
[NOTARIAL SEAL.] JULIO CESAR GONZALEZ,
Notary Public.

Approved this 6/29/07.
B. S. RODEY, *Judge.*

137 In the District Court of the United States for Porto Rico, Sitting at San Juan.

JACINTO LOPEZ LABORDE ET AL.
vs.
BUENAVENTURA UBARRI.

Bill of Exceptions.

Be it remembered that on the — day of April, 1907, the above-entitled cause came on for trial before the above Court and a jury, duly empanelled—Honorable Bernard S. Rodey, presiding. The Plaintiffs appearing by Messrs. Sweet, Rossy and Campillo, their Counsel, and the Defendants appearing by Jacinto Texidor and W. H. Hawkins, his Counsel, and the following proceedings were had:

The Demurrer of Defendant to the Complaint having been submitted to the Court and over-ruled by it, Defendant then and there duly excepted to the action of the Court. Thereafter, and before beginning the trial of the cause, Defendant presented his Motion praying for a dismissal of the cause and of the Complaint herein, which said Motion is, as follows:

Now comes the Defendant herein, Buenaventura Ubarri, and moves the Court to dismiss the action brought herein for lack of indispensable parties, since it appears of record that all of the other Defendants composing the said Sucesión of Pablo Ubarri have been dismissed from the said cause because of one cause or another whereby this Court has no jurisdiction over them; and, further, because the Complainant does not state facts sufficient to constitute a cause of action

The court over-ruled the said motion, and said Defendant then and there duly excepted. Thereafter the Plaintiffs, to sustain the issues upon their part, offered the testimony of one of the Plaintiffs, Jacinto Lopez y Laborde. This witness was the son of Jacinto Lopez y Martinez and Concepción Laborde, his wife. He stated that he was 41 years of age, and that at the time of the death of his
138 father, the said Jacinto Lopez y Martinez, he was in Madrid, being at that time 19 years of age; that he had been living

in Madrid from 1882 to 1884, and returned to Porto Rico about a month after the death of his father. He being interrogated as to the value of the property described in the Complaint, the following questions and answers were, respectively, propounded and given:

Q. Did you return from Madrid direct to your father's plantation?

A. Yes, sir.

Q. And did you continue to remain there for some length of time?

A. Yes, sir; until we were ejected from the property.

Q. What did you find there in the way of personal property? In the way of cattle and horses?

A. There were some horses there, some cattle, some mules, some hogs, pigs.

Q. Well, how many head of cattle do you remember seeing there?

A. Approximately from 1200 to 1500 head of cattle.

Q. How many head of horses did your father have and did you find on the plantation?

A. There were quite a number of [illegible] horses, you mean male and female, horses and mares?

Q. I suppose a mare is a horse.

A. About 150 or 200.

Q. You say you found about 1200 or 1500 head of cattle?

A. Yes, sir.

Q. Upon what basis do you make your estimate? What did you do? What fact connected you with the cattle, if any, upon which you base this statement to the jury?

A. From the fact that I myself personally used to go around inspecting the cattle, making ocular visits daily.

Q. What do you mean by inspecting them, as a herder, in the sense that we understand as a herder?

The Interpreter: He uses the word 'voltear', which means to pay a visit to the place and to go around the farm.

Q. Did the plantation do any dairy business?

A. Yes, sir; but to a small extent. It was not a regular business. The milk there was just for the purposes of the home, for domestic purposes.

Q. How many acres of land did your father's planation contain, approximately?

A. 4,305.

Mr. Sweet: I would like to have Counsel and the jury understand that we had him figure this out.

The Court: We understand that you have no doubt consulted with him many times.

Q. What estimate, what value, did you place on this property at the time you came home, and, in this connection, you may produce any memoranda you have made in which you have prepared an estimate—that is, any memoranda that you have prepared yourself.

A. I figure or estimate the value of the property at that time to be, approximately, 300,000 pesos, Mexican Coin.

Q. Have you no data from which you can give the jury more definite information than that?

A. I can give you that information from my head.

Q. All right, give the details of it to the jury.

A. The property, as I said before, had 4,305 acres of land.

(Here the witness gave a discription of the land.)

The COURT: How many acres of that were there?

A. 200—One "Caballeria". Now with regard to the properties in the jurisdiction of Dorado, we had there something like 200 acres "Vega" land, alluvial land, which I estimate had a value of $200.00 per acre, inasmuch as that was the ordinary price for "Vega" or alluvial land of the 1st class. It consisted of about 500 acres of 2nd-class. These may be valued at $175.00.

Q. There were 200 acres of $200.00 land?

A. Of $200.00 land 200.

Q. And how much of this 2nd-class?

A. 500; and 3rd-class land we might value it at 100 pesos per cuerda. Of that there were approximately 1,000 cuerdas. And of the last class, 4th-cl. it consisted of sandy land, marshy land. That is the worst portion of the property. That I assess or value
139 at $5.00 per acre. That is what constituted the balance of the property.

Q. How many acres were there of that?

A. Over 1,000; it makes up the balance to be added to those already measured, up to the total amount already given, to complete the total amount given. In addition to that there were also some brick buildings, used for manufacturing purposes, where the sugar was made. The buildings were very strong, very solid, the value of which I estimate at $10,000.00 they measured 40 metres frontage by sixty in depth. They form a square.

In addition to that we had some sugar making machinery, a sugar mill of the Watt system, vertical system, twenty five horse power, mills, boilers, vats. We also had a sawmill, vertical and horizontal; another engine to make shingles including accessories or supplies, which I could value at 25,000 pesos. In addition to that we had the dwelling house the value of which was 2,000 pesos at least.

Mr. SWEET: Now, have you given a full list of all of the property, as you remember it, both real and personal, of that estate?

A. Yes, sir.

Q. That included your sugar factory and sawmill?

A. Yes, sir; the principal portions of it; the main part of it.

Q. At what did you say you valued that entire property in your estimate?

The COURT: He said 300,000 pesos at the start.

Q. At what did you value the cattle?

A. The cattle I would give a value approximately at $25.00 per head, because they consisted of young cattle which were being raised and old ones, so $25.00 a head is my estimate. Twenty five pounds of meat at that time sold for 2.50 and $3.00, that is, an arroba, which is 25 pounds.

Q. Do you know the amount at which that estate was appraised after your father's death?

A. Yes, sir.

Q. What was the amount.

A. 123,000 pesos.

Q. How do you account for the great difference between the amount at which it was appraised and the amount which you stated it was really worth?

A. It is for that reason that I have taken pains before to give a detail of the property, because I disagreed with the appraisement of the property given in the testimentary proceedings, because the valuation given to it in the testimentary proceedings was the result of indications or suggestions of Mr. Pablo Ubarri, who was my mother's representative or agent, to the effect that the appraisement be put low with the view in his opinion of not paying taxes.

The COURT: What do you mean, then, that you know that the value was put down low to avoid heavy taxation?

A. Yes, sir, I understood Mr. Sweet to ask me if I knew that the property had been appraised at 123,000 pesos in the inventory, and I told him yes, that I did know it, because I saw the testimentary proceedings.

Mr. SWEET: What I intended to ask you was if you knew why this low estimate was placed upon the property.

A. For the reason already stated.

The COURT: He has already answered that he did know, and that it was to avoid heavy taxation.

Upon cross examination this witness gave the following testimony:

"You said that in the appraisement of this property, which was 123,000 pesos, which was opposed to the value you put it at of 300,000 pesos, that this appraisement was made by the agent of your mother, Pablo Ubarri. Is that true? Am I right?

A. Yes, sir.

Q. Do you mean to say that he personally put that value on it?

A. Yes, sir: he advised my mother to appraise the property at that price.

Q. How do you know that?

A. Because I heard her say it.

Mr. HAWKINS: Then I ask that all of that testimony on that point be struck out as not being competent, being hearsay.

The COURT: You mean all that he said with reference to the value?

Mr. HAWKINS: With reference to the fact that Pablo Ubarri made this appraisement at 123,000 pesos.

The COURT: Of course if that were the only source of his information it would be hearsay. You may cross examine further on that.

Mr. HAWKINS: I have asked him how he knows it and he says that is the way he knows it.

141 The COURT: I will permit the other side to examine on that before I strike it out. If they don't lay a better foundation for it I will consider your motion.

Q. You say that your mother was the one that made this appraisement?

A. No, sir, she didn't make it.

Q. I thought you said she made it under the advice of Pablo Ubarri.

A. No, sir, she appointed Pablo Ubarri attorney in fact, and as her attorney in fact he gave her that council or advice, that in case she noticed that low estimate or value of the appraisement of the property not to worry about it, because it was done with the intention of lowering the taxes on the property.

Q. How does he know that fact. He was a boy 19 years old. How does he know that fact? What sort of knowledge has he got himself?

A. From the fact that I myself inspected or saw the testimentary proceedings and looked over the papers and everything. In addition to that, I heard my mother say that, since we had very frequent private conversations.

The COURT: It is in evidence, is it not, Judge Sweet, that it was valued at 123,000 pesos.

Mr. SWEET: Yes, sir; I don't care whether that statement stands, because we can prove it by other witnesses.

Mr. HAWKINS: I submit that either one of his sources of information are incompetent, that he has heard his mother say so or that he has read the proceedings. The proceedings themselves are the best evidence.

The COURT: The worst phase of this witness's testimony is that he was not qualified when Judge Sweet started in. Judge Sweet did not proceed to actually qualify him as to values in the country at that time. That was the main objection. With all due respect, I don't think much of your other objection.

Mr. HAWKINS: I did not understand that Mr. Sweet put him on as an expert.

The COURT: I don't see the materiality of sustaining your objection, because there is nothing in it without that of this witness's own knowledge. Proceed.

Mr. HAWKINS: Does your Honor make a ruling as to striking —

142 the testimony?

The COURT: What his mother told him is hearsay and will be stricken out.

Mr. HAWKINS: And as to his knowledge from having read the testamentary proceedings?

The COURT: He can know that in the testamentary proceedings it was so valued, from having seen them. That is good evidence.

Mr. HAWKINS: Without presenting the testamentary proceedings? Note an exception.

The Counsel for Defendant objected to such testimony for the reason that it was hearsay, the testamentary proceedings being the best evidence, if competent at all to that purpose; and because the

witness had not shown himself to be competent to testify as to the values of the property referred to.

This witness gave no other testimony except as to the property left by his father at the time of his death, and the value thereof.

Thereupon the Plaintiffs offered in evidence and read to the jury two documents: (1) a protocolization of the various proceedings had in connection with the estate of the said Jacinto Lopez y Martinez; and (2) a substitution of power, executed by Don Pablo Ubarri in favor of Tomas Caballero. The said documents are, as follows:

143 EXHIBIT "A" FOR PLAINTIFFS, FOR IDENTIFICATION.

(*Translation.*)

Notarial Office.

Established the First of March, 1901.

Herminio Diaz, Lawyer and Notary.

Copy of Public Deed No. 94.

Drawn in the Notarial Office of Don Juan Ramón Torres, by Doña Concepción Laborde y Rapp, about protocolization of the partition of the property of Don Jacinto Lopez, the 8th of March, 1887.

San Juan, Porto Rico.

144 Notarial Office.

There is a seal. Herminio Diaz Navarro, Lawyer and Notary, San Juan, Porto Rico. There is a Notarial Seal. Number 94.

In the City of San Juan the Baptisi of Porto Rico, being the 8th day of March, year 1887, before me Don Juan Ramón de Torres, of this vecinity, Notary of same, and belonging to the Territorial College of this Island, with office open on Fortaleza St., No. 32, and assisted by the witnesses (instrumental), set forth later, there appeared Doña Concepción Laborde y Rapp, 49 years of age, widow of Don Jacinto Lopez, a proprietress of the vecinity of the town of Dorado with personal certificate (cedula) of seventh class, ticket No. 53, its date being of this month of March, and Don Julian Matienzo y Ahedo, of 33 years, single, a merchant of this vecinity, with certificate (cedula) of fifth class, ticket No. 660, which were shown to me and returned.

The former appears in her own right and the second in his capacity as curator *ad litem* of the minor children of Don Jacinto Lopez in accordance with his appointment which reads as follows:

"In the city of San Juan the Baptisi of Porto Rico being the 11th day of the month of July, of the year 1885; Señor Don Manuel Suarez Valdez, Judge of the First Instance of the Cathedral District of this Capital, before me the judicial clerk (escribano) said: That he should appoint and did appoint Julian Matienzo, of the

vecinity, of this Capital, Curator *ad litem* of the minors, Doña Francisca Luisa, Don Jacinto Lorenzo, Doña María de la Concepción, Don Enrique and Don Manuel Demetrio, and Doña María de la Consolación López y Laborde, conferring upon him all rights and faculties necessary for their representation in this intestate proceedings in accordance with legal prescriptions, as the power conferred by his honor is given without limitation. And for a greater validity of everything that may be done in behalf of said minors, his Honor uses of the authority conferred upon him by reason of his office and judicial decree, ordering that of his appointment, be given to the interested party, as many copies as he may ask. It was then decreed, ordered, and signed by the above mentioned Hon. Judge, of which I certify.—Manuel Suarez Valdez. Esteban Calderon."

145 It is in accord with the contents of the original to which I refer.

I certify that the parties are known to me, their profession, and vecinity of both, as well as the fact that they have the free administration of their property, the use of their civil rights and that I consider them with legal capacity for this contract, and they expressed the following facts:

First. That Don Jacinto Lopez y Martinez, husband of the former and legitimate father of the minors represented by the second, died in the town of Dorado, as set forth by certificate which reads as follows:

Burial.—Don Andres Girona y Martinez, Priest of this holy Church of San Antonio de Padua of Dorado, Diocesis of Porto Rico, I certify: That in the Book No. 3, where deceased certificates of his parish are registered and on page 242 over, there *asis* one which reads as follows: Certificate of death of Don Jacinto Lopez: The seventh day of November of the year 1884; I, the undersigned, Priest of this Holy Church of San Antonio de Padua of Dorado, order the burial with prayers without the body being present in church, and order the ecclesiastical interment in the cemetery of this parish of the deceased body of Don Jacinto Lopez, Delegated Mayor of this town, said Lopez being born in Toa Baja and of the vecinity of this parish, a legitimate son of Don Jacinto and Doña Romuarda Martinez, and married the second time with Doña María de la Concepción Leocadia Laborde, and about 55 years *fo* age. He was taken to the cemetery with solemn procession; I certify.—Andres Girona, Priest.

Second. That upon his death without leaving formalized will, his widow and heirs began the corresponding abintestate action before the court of the First Instance of the Cathedral District, Clerkship (escribania) of Esteban Calderón, in which, after legal proceedings, the following declaration of heirs was obtained.

Order.

"Porto Rico, *April* 23, 1885.

Whereas Don Jacinto Lopez having died, of the vecinity of the town of Dorado, on the 7th of November last without leaving a

will, Attorney in fact (Procurador) Palacios in behalf of Don Edu-rdo Trujillo, legal representative *representative* of the rights of his wife, Soña Trinidad Lopez, legitimate daughter of the deceased, started the intestate proceedings and in its consequence the necessary orders of occupation and deposit of the property were fulfilled, whereas, Attorney in fact (Procurador) Caballero appeared as attorney of Doña Antonia Lopez y Garcia and of Concepción
146 Laborde, the former, a daughter of the second, the wife of the deceased, Don Jacinto Lopez and legal representative of her minor children had of said marriage; the partie*d* bringing with them the documents proving their capacity for the declaration of heirs.

Wher-as, of the documents presented there appears that Don Jacinto Lopez died without a will, and contracted first marriage with Doña Trinidad Garcia also deceased having of said marriage, Doña Nicolasa Trinidad, wife of Trujillo and Doña Luisa Antonia, and that said Lopez was married afterwards with Doña Concepción Laborde, of which marriage, Dona Francisca Luisa, Jacinto Lorenzo, María Concepción, Maria de la Consolación, Enrique and Manuel Demetrio were born.

Whereas, the district attorney gave the report in the sense that there be declared heirs of Don Jacinto Lopez the above named children and considering that the legitimate children are the legal heirs of their parents, and that in the case of intestacy, they inherit always by their own rights and in equal shares.—Having seen Law No. 3,—Tit 13, part 6 & Lst., and 8 Tit 20 book 1st of the Novissima Recopilación (Code) his Honor before me said:—That he declared intestate heirs of the deceased Jacinto Lopez, with equal right, his legitimate children, Doña Nicolasa Trinidad, Doña Luisa Antonia Doña Francisca Luisa, Don Jacinto Lorenzo, Doña María de la Concerción, Doña María de la Consolación, Don Enrique and Don Manuel Demetrio, without pre*du*ji-e of a third party of equal right. It was then ordered and signed by the Hon. Judge before me and I certify.—Manuel Suarez Valdez, Esteban Calderón."

Third. As a consequence of these declarations which became legal, the formation of the inventory and appraisement of the property of Jacinto Lopez *Lopez* was practise-d and Don Francisco de Paula Acuña was appointed Accountant Divider, and he formulated the account, dividing the property which I accompanied and add in this deed to be inserted in all copies issued of same, their literal contents being as follows:

Dividing Account.—Attorney Don Francisco de Paula Acuña, Accountant, and Divider appointed by *gh*e representatives of the Succession of Don Jacinto Lopez. I proceed to practise the liquidation division and adjudication of the property under the following terms.

First.

About the marriages contrasted by Don Jacinto Lopez and liquidation to his wife.

147 Don Jacinto Lopez was married first to Doña Trinidad Garcia of which he had Doña Nicolasa and Doña Antonia.

He practised the testamentary proceedings sometime after the death of said wife and paid over to his daughter Doña Nicolasa what was due her from her mother's. He also paid to his other daughter, Doña Antonia, part of her credit leaving without paying $1,088.00 and for this amount she will appear as a creditor. Lopez married a second time with Doña Concepción Laborde, and she did not bring any amount to the marriage and the property having been diminished instead of increased, the fortune after the marriage, she cannot obtain any portion as such.

Second.

About the declaration of heirs, Don Jacinto Lopez died in the town of Dorado on the 7th of November, 1881, and on the 4th of December of said year, judicial action was taken by Don Eduardo Trujillo in the name of his wife, Doña Nicolasa Trinidad Lopez and asking for intestate proceedings because of the death of Don Jacinto without a will. After all of these proceedings the widow, Doña Concepción Laborde, asked for the declaration of heirs after corresponding proof and this having been done after hearing the District Attorney the decree, was obtained April 23, 1885, by which there were declared heirs of the deceased Don Jacinto Lopez, share and share alike, his legitimate children, Doña Nicolasa Trinidad, Doña María Concepción Doña Luisa Antonia, Doña Francisca Luisa, Don Jacinto Lorenzo, Doña María de la Consolación Don Enrique and Don Manuel Demetrio, without prejudice of a third party of equal right.

Third.

About inventories and division the interested parties having agreed after some dissention among themselves, they asked for the information of the judicial inventory and at the same time the appraisement of the property, and this having been ordered after the appointment of a Curator for minor actions on account of the incompatibility of the mother to represent them in Court, the Clerk (escribano) Don Esteban Calderón, was appointed to make the inventory and Don Tulio Larinaga and Don José Rafael Dávila designated as experts, by the Curator of the minors in which appointment they all agreed, it was done with the following result: Jewelry and furniture of different kinds, all assessed in $742.00, a plantation known as San Antonio situated in the Municipal District of Dorado with the boundaries which will be set forth in the inventory, composed of 189 acres and 75/100 of first class, at
148 $150.00 each, $28,464.00, 281 acres and 14/100 of second class, at $100.00 each, $28,114.00;—260 acres and 44/100 of third class assessed at $25.00 each, $6511.00;—267 acres of fourth class, (with some mountain) at $15.00 each, $4005.00;—2368 acres and 67/100 of fifth class at $5.00 each, $11,893.35;—one house assessed in $1,200.00;—another house in ruins, materials only, $300.00;—a ranch of galvanized iron for cattle, $160.00;—the principal building of the office of the plantation, $8,000.00;—one ranch for carpenters and ironsmiths, another of burning material, and

another one roofed with straw, $320.00;—One wooden house roofed with Yagua, $50.00;—two wells $550.00;—an oven to make bricks and another one for lime, $240.00;—the machinery with its appurtenances for making sugar and three to saw wood, $8,407.00;—utensils for the soil and other articles, $854.50;—cattle, $1,180.00;—plantations, @ 514.00;—A part of the plantation, a two story house the lower part of brick and the upper part of wood, was assessed in $1,200.00;—and the land known as Monte Rey and Caballeria de los Oficiales, composed of 668 and 50/100 acres of third class with the boundaries expressed in the inventory, assessed with the mountain which they contain, in $16,712.50;—Finally the debt or active credit of Don José Secola for the amount of $240.00, making a total value in the inventory, of $123,077.35, there were also included in the inventory the debts of the Sucession which amounted to $40,048.30, liquidated in consequence — the difference between the two sums, was $83,029.05. This inventory was approved after notification to the interested party, they appeared before the Court stating that the total amount of the liabilities should be added, $15,029.05, the value of interest, and therefore the liquidated amount was reduced to $68,000. The parties ratifying this statement, it remained definitely approved, the inventory with the amount referred to of $68,000.00;—For the division the amount of $8,000.00 ought to be deducted as expenses considered necessary for the intestate proceedings and those which may be caused in the partition of the property, protocolization and delivery to the respective parties of their corresponding shares,—In this way there is the total sum of $60,000.00 to be divided amongst the heirs which have been so declared, they being eight, there corresponds $7,500.00 to each, for whose payment it will be provided:

Property.

Assets as per Inventory	$123,077.35

149 *Common Debits.*

Passive Credits as per inventory	$40,038.30
Same added to pay interests with judicial approval after inventory	15,029.05
Same calculated for costs, Royal duties if exacted and expenses to place the heirs in possession of their respective shares, save excess or lack	8,000.00
	$63,077.35
Liquidated credit to be divided among the heirs	60,000.00
The heirs being eight legitimate children of the deceased Don Jacinto Lopez, corresponding share to each	7,500.00

Share for the Payment of Debits.

Total of said debits	$63,077.35

Adjudication and Payment.

To the widow Doña Concepción Laborde, for the payment of claims against the estate, the following property:

A house, the lower part brick and the upper part, wood, valued	$1,200.00
An oven to make bricks	120.00
Two evaporadores, Wetgel, of copper	700.00
A saw-mill with its appurtenances	3,038.35
Four hogsheads of sugar	140.00
Ten acres of land in sugar cane	150.00
Four palm groves with 182 palm trees	364.00
One tract of first class land of 120 acres, bounded on the North by the property of Trinidad Lopez; on the South by the country road, between Maracayo and Toa Baja; on the East by the Dorado river; and on the West by the high road which passes by this town, at the value of $150.00 p. acre	18,000.00
Another tract of land of 6½ acres first class, bounded on the North and East by Santa Barbara plantation; on the South by the property of Trinidad Lopez, on the West by the Dorado high road, of the value of $150.00 p. acre	975.00
Another tract of land made up of 2760 41/100 acres of second, third, fourth and fifth class, bounded on the North by the sea; on the South by Pedro Lopez, Juan Marrero and Santa Barbara plantation and Carmen plantation; on the East by the land on Pedro Martorell, and the plantations Santa Barbara and Santa Rita, the land of Enrique and Jacinto Lopez; and on the West by the plantations Ceiba and San Vicente, valued all according to the class, at	$21,677.30
Another property of 668½ acres of third class land, bounded on the North by Carmen plantation and the land of Juan Marrero; on the South by the plantation Santa Elena; on the East by the land of Celestino Garcia, José G. Canino and Bernardino Benitez; and on the West by the land of Maximo de los Santos, valued at $25.00 each	16,712.50
Total	$63,077.35
Remained paid	00,000.00

Share Apportioned to Antonia Lopez Garcia.

Adjudication and Payment.

A wash stand of marble	$6.00
A wardrobe	25.00
The image of San Antonio	20.00
A mule with her young one	45.00
A mare with her young one	30.00
A horse	30.00
A tract of land made up of 73 34 100 acres of second class land bounded on the North and East by the land of Jacinto Lopez Laborde; on the South by land of the same party, the country road and the land of Lucas Marrero; and on the West by the land of Pedro Lopez, valued at $100.00 per acre	7,344.00
Total	$7,500.00

Share Apportioned to Trinidad Lopez Garcia.

Adjudication and Payment.

A walking stick, gold handed	25.00
Four yokes of Oxen	300.00
151 A wooden house roofed with shingles	$25.00
Two Horses	60.00
A tract of land made up of 15 65 100 acres of land, first class bounded on the North by the land adjudicated to Concepción Laborde; on the South by the land of José María San Juan; on the East by the Dorado river; and on the West by the high road of this town, valued at $150.00 each	6,615.00
Total	$7,500.00

Share Apportioned to Jacinto Lopez y Laborde.

Adjudication and Payment.

A gold watch and chain	$130.00
A barometer in bad condition	.50
Two drawings of Porto Rico	2.00
One desk chair	3.00
An old Desk	8.00
Twenty chairs in bad condition	22 50
A piano in bad condition	80.00
Two Double-barrel guns	30.00
A revolver	6.00

A Remington rifle	16.00
A writing table	6.00
A book case	2.00
One iron bed	8.00
A marble washstand	4.00
Two wooden washstands	2.00
A wardrobe	20.00
Two old trunks	2.50
An old valise	1.50
Two cots	3.00
One table	3.00
One rack	1.00
Three clocks in bad condition	20.00
An old side board	2.00
A saddle	4.00
152 Six rocking chairs	24.00
Two Sofas	10.00
The dwelling house appraised in the plantation inventory	1,200.00
A ranch roofed with galvanized iron	160.00
A ranch used as a carpenter shop	150.00
Another building used for storing pulp	70.00
Another building	100.00
A wooden house roofed with Yagua	50.00
One Oven to burn lime	120.00
Twelve old boilers	60.00
Eight pails	4.00
Eight pairs of cart wheels	80.00
Forty-one old tires	41.00
Six axes for cars	24.00
A Buggy in bad condition	10.00
A sloop	4.00
Twelve empty hogsheads	12.00
A heap of old iron	25.00
Two horses	80.00
A tract of land made up of 164 92 100 acres of which 123 acres are of fifth class, at $85.00 per acre, and the balance of second class at $100.00 each, bounded on the North by land of Enrique, Manuel, Consuelo, and Concepción Lopez; on the South by the country road Higuilar, and the property of Antonia Lopez; on the East by the high road of Dorado; and on the West by the property of Antonia Lopez and the land adjudicated to Concepción Lopez	4,807.50
Total	$7,500.00

Share Apportioned to Luisa Lopez Laborde.

Adjudication and Payment.

An iron bed	$8.00
Twelve knives and forks of silver	30.00
A mare	30.00
A horse	30.00
153 A share in the main office building of the plantation	$1,600.00
A portion of the machinery and other appurtenances thereof	1,815.00
A tract of land made up of 39 86 100 acres second class, bounded on the North by the Santa Barbara plantation; on the South by the property of Concepción Lopez; on the East by the Dorado road; and on the West by the property of Consuelo Lopez, valued at $100.00 each	3,986.20
Total	$7,500.00

Share Apportioned to Concepción Lopez Laborde.

Adjudication and Payment.

An iron bed	$8.00
A saddle	4.00
Kitchen utensils	4.00
Twenty-four silver spoons	48.00
A mare	30.00
A horse	30.00
A share in the main office building of the plantation	1,609.00
A portion of the machinery and appurtenances thereof.	1,815.80
A tract of Land made up of 39 60 100 acres of second class land, bounded on the North by the property of Luisa Lopez; on the South by the property of Jacinto Lopez; on the East by the high road of Dorado; and on the west by the property of Consuelo Lopez, valued at $100.00 per acre	3,960.00
Total	$7,500.00

Share Apportioned to Consuelo Lopez Laborde.

Adjudication and Payment.

An iron bed	$8.00
A three lights lamp	10.00
A marble Washstand	6.00
A wardrobe	20.00

A marble bureau		6.00
A saddle		4.00
An image of Jesus		20.00
	Four spittoons	1.00
154	A mule	20.00
	A mule and her colt	45.00
A mare		30.00
A horse		30.00
A share in the main office building of the plantation		1,600.00
A portion of the machinery and other appurtenances thereof		1,815.80
A tract of land made up of 38.84/100 acres of second class land, bounded on the North by the Santa Barbara plantation; on the South by the property of Jacinto Lopez, on the East by the property of Luisa and Concepción Lopez; and on the West by the property of Manuel Lopez, valued at $100.00 each		3,884.20
Total		$7,500.00

Share Appertioned to Manuel Lopez Laborde.

Adjudication and Payment.

An iron bed	$8.00
Three golden frames	1.00
A ward robe	20.00
A dining-room table	20.00
A sideboard	2.00
A yoke of Oxen	75.00
Two mares	60.00
One horse	30.00
A share in the main office building of the plantation	1,600.00
A portion of the machinery and other appurtenances thereof	1,815.80
A tract of land made up of 36.68/100 acres of second class land, bounded on the North by the Santa Barbara plantation; on the South by the property of Jacinto Lopez; on the East by the property of Consuelo Lopez; and on the West by that of Enrique Lopez valued at $100.00 per acre	3,868.20
Total	$7,500.00

Share Appertioned to Enrique Lopez Laborde.

Adjudication and Payment.

	An iron bed	8.00
155	Two pine tables	$1.00
	A filter	1.00
A yoke of Oxen		75.00

A mare	30.00
Two horses	60.00
A share in the main office building of the plantation	1,600.00
A portion of the machinery and appurtenances thereof	1,815.00
A tract of land made up of 39 9/100 acres of second class land, bounded on the North by the Santa Barbara plantation; on the South by the property of Jacinto Lopez; on the East by that of Manuel Lopez; and on the West by the land adjudicated to Concepción Laborde, valued at $100.00 each	3,909.20
Total	$7,500.00

(N. B.) If in the future new property should turn up belonging to the Succession, or the property divided should have less the increase or diminution shall be made in the amount apportioned to each one of the heirs in the same proportion that has served as basis for the present division.

Porto Rico, July 1, 1886.

FRANCISCO DE P. ACUÑA.

Fourth.

The liquidation having been made and the agreement of the interested parties, presented to the Court, the Judge ordered the approval of same and the issue of certificate of the clerk Calderon, who delivers me said copy which reads as follows:

"Don Esteban Calderon y Florit, Clerk in the proceedings before the Court of First Instance of Cathedral District of this City.

I hereby certify: That on page 186 over, and 187 of the intestate proceedings of Don Jacinto Lopez there is an order approving the division of the property which read as follows:

"Order Approving the Partition.

In the City of San Juan the Baptist of Porto Rico, being the 5th day of July of the year 1886, the Hon. Don Manuel Suarez Valdez, Judge of the First Instance of the Cathedral District, having examined these proceedings Whereas, the Accountant and Divider has made a liquidation, division, and adjudication in accordance with these proceedings, documents, and agreement of the interested parties, Whereas, these parties have not made any opposition and on the contrary have agreed with them, and considering that in this case the approval of said liquidation is in order, in accordance with the provision of Section 482 of the previous Law of Civil Procedure, said: that he should approve and did approve the expressed liquidation; division, and adjudication of the property in the inheritance of Dan Jacinto Lopez, made by the Accountant Attorney Don Francisco de P. Acuña ordering that they be protocolized in the Notary of Don Ramón de Torres with the corresponding payment of seal paper and that it be delivered to the

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interested parties whatever have been adjudicated to them with the deeds of their properties, having placed the annotation with the testimony which shall be presented within the legal term.

And by this a definite order was thus pronounced, ordered and signed by the Hon. Judge, and I certify. Manuel Suarez Valdez, Esteban Calderon."

And complying with the order of his Hon. and to deliver to the interested parties, I issue the present verified copy in San Juan, Porto Rico, July 6, 1886.—Esteban Calderon."

Fifth.

When the common debits were established, they were not detailed, they considered advisable to do so at the present time, and having before me the inventory of page 146 to 152 of the intestate proceedings, the mentioned credits are as follows:

Debits.

Luisa Antonia Lopez, for the balance of her share in her mother's estate and other claims		$1,188.00
Pablo Ubarri		24,000.00
Ricarda Hernandez		5,000.00
Santiago Echeveste		3,325.00
José Pont		2,160.00
Leopordo Vazquez Prada		1,701.80
Quintin Guardiola		1,000.00
Andres Girona		400.00
Sucesores de Dorado		150.00
Salduondo y Valle		168.00
José Rodriguez		143.00
157 Font y Roselló		$112.53
Ahumada y Company		51.20
Viuda de Eegevarria y Company		50.78
Melon y Company		10.98
Elizardo y Guerrero		25.65
Joaquin Peña		13.00
Candido Hernandez		39.73
Forteza Hermanos		25.70
Pedro Córdova		246.33
José Brustenga		25.00
Guillermo Rubert		50.00
Dr. Larregui		80.00
Luis Aguilar		82.00
Total		$40,048.30

The inserted items are faithfully copied in accord with their original to which I refer.

In its consequence complying with the precept contained in the order of approval.

Declare.

First. That by virtue of the present they desire the protocolization in the Registry, of the attached liquidation that they be considered as a public document so that at all times they may prove their dominion title and property adjudicated under the inheritance of the deceased, Don Jacinto Lopez Martinez, granting each other the rights that they may have formalizing only this document the parties appearing, because other heirs do not reside in this city.

Second. This Capital is designated as a vecinity for all action that may be caused by reason of this deed, and they submit to the ordinary Courts of same.

Third. There is an express reservation of a legal mortgage in favor of the estate, the Provincial Municipality for the preference that it has for the collection of unpaid taxes.

Fourth. Having been advised that other copy of the present should be produced within the following thirty *days* to pay the corresponding fees, according to the present law; after which it should be taken to the Registry of Property to be registered, otherwise it would not be valid against third party, and will not be admitted in trial, except in the cases allowed by the mortgage law.

158

Under which conditions they formalized this deed which they bind themselves to keep, comply, and execute in all respects.

Reading the same and being satisfied with its contents, they sign it together with the witnesses, present, all of this vecinity, Don Jesus de Goicochea and Don Joaquin Oliviera y Garcia, having been advised of their rights, and I the Notary sign it, certifying to know the witnesses and of having knowledge of its contents. (signed) Concepcion Laborde, Widow of Lopez.—Julian Matienzo.—Joaquin O. Garcia.—Jesus de Goicochea.—(Signed) Juan Ramón de Torrez. Notary.

Herminio Diaz Navarro, Lawyer and Notary, of this vecinity and residence with office open in San Justo Street No. 12.

I certify that the previous copy is a faithful one of its original and recorded in the Notary's protocolo of Don Juan Ramón de Torres, being under my charge to-day as general Archivero of the protocolos of this Notarial District of San Juan. Certifying it and by request of the lawyer, Don Luis Campillo, I issue the present, placing on it the corresponding Internal Revenue stamps,—of the value of fifty cents, leaving it annotated, and signing it in San Juan, Porto Rico, April 10, 1907.

(Signed) HERMINIO DUAZ.
General Archivero.

O. K.
M. S. GEIGEL.
Interpreter, U. S. Court.

159 (*Translation.*)

EXHIBIT "B" FOR PLAINTIFFS.

In the District Court of the United States for Porto Rico.

JACINTO LORENZO LOPEZ LABORDA
vs.
PABLO UBARRI YRAMATEGUI.

Deed of substitution of power, granted by the Most excellent Sir. Don Pablo Ubarri in favor of Solicitor Procurador Don Tomas Caballero, before Don Pedro R. Escalona y Macias, a Notary resident in this Capital—San Juan, Porto Rico, 8th of June, 1885—No. 207—Substitution of power.

In the City of San Juan, Porto Rico, being the 8th day of June, 1885, before me, Don Pedro Rafael Escalona y Macias, Notary of the Territorial College of this Province, with residence in this Capital of which I am a neighbor and witnesses which will be stated further on. Appears, The Most Excellent Sir Don Pablo Ubarri y Capetillo, of 58 years of age, a proprietor, married, of the vicinity of this Capital, with official identity document (cedula) of fourth class, ticket no. 9, which he presents and I return. He assures me that he is in the full enjoyment of his civil rights, having in my judgment the necessary legal capacity in order to form the following substitution of power all of which, as well as of his knowledge and other circumstances, I, the Notary certify:

He sets forth: That by deed of the first of the current month, Doña Concepción Laborde y Rapp, widow of Don Jacinto Lopez, in her own right and in representation of her minor children had in her marriage with same, Doña Antonia Lopez y Garcia in her own name and Don Eduardo Trujillo representing his legitimate wife Doña Nicolasa Trinidad Lopez y Garcia granted in his favor a general power which says:

Power—200. General Power. In the City of San Juan, P. R. being the first of June, 1885—Before me, Don Pedro Rafael Escalona y Macias, a Notary of the Territorial College of this Province, with residence and vicinity in this Capital and witnesses that I will mention—Appears: First—Doña Concepción Laborde y Rapp, of
160 legal age, widow, of the vicinity of Dorado, accidentally in this Capital with official personal document of identity, (cedula) ticket no. 64, 2nd—Doña Antonia Lopez y Garcia, single, 26 years of age, also of the vicinity of Dorado accidentally in this Capital, with official personal document of identity, (cedula) ticket no. 62.—And 3rd. Don Eduardo Trujillo y Pisa, of 37 years of age, married, a farmer of the vicinity of Toa Baja with official personal document of identity, (cedula) ticket no. 23. They assist—The former in her own right and representation of her minor children, had during her marriage with the deceased Don Jacinto Lopez. The second one in her own right and the third in representation of his

legitimate wife Doña Nicolasa Trinidad Lopez y Garcia. They all assure me that they enjoy in full their civil rights, having in my judgment the necessary legal capacity to formalize the present mandate of which, as well as of the knowledge and other circumstances I, the Notary certify and They set forth—That in the representation in which they appear they grant and give such an ample power, entire and efficacious as it may be required by law and may be necessary in favor of the Most Excellent Sir Don Pablo Ubarri a proprietor of the vicinity of this Capital so that representing his person, actions, and rights, and in accordance with the instructions which they have communicated to him, and will communicate, he will represent them in all the matters, actions and suits in which they are interested, suing, defending, which they may have pending and which may occur hereafter, before any Court of Justice. So that he may establish and follow in all of its course the intest-e proceeding of the deceased husband of the former, father of the second and of the wife of the third, Don Jacinto Lopez, who died in Dorado, without leaving a will, six months ago, formalizing the required inventories, valuations, partitions and adjudication of the undivided estate: among the legitimate heirs, taking cognizance of all their incidents and differences that may occur, until he may obtain the approval of all protocolization and material delivery of the property adjudicated, establishing and as-u*ear*-ing the oppositions that may be made. And collecting and receiving the amounts that such capacity may be owed, according with the documents, accounts and papers that may be presented; so that if it became necessary he may appear in Court in verbal actions, conciliation proceedings, of ejectment, bankruptcy, of voluntary jurisdiction, contentions, and any other, settling differences that may occur or submitting the
161 questions to the decisions of *referri*-es, friendly compounders, with the penalties and fines that they may agree, so that he may establ*ã*ish challenges, appeals of all sorts, following one and the other through all of their proceedings and desisting whenever the interests of the grantors may be benefited thereby: So that he may establish protest, mediations, injunctions, and to interpose all kinds of appeals and actions that he will follow throughout in accordance with the corresponding law: So that he may record the realty before the Registrar of Property, and same lacking registration, he may establish the corresponding possessory informations, subscribing the instrument and proceedings as well as the deeds of any kind that he may have to grant, with certificate of delivery, or renunciation of the laws in the case, and for everything relating and whatever is annexed, accessory, incidental or depending from the mentioned intestate proceeding from Don Jacinto Lopez they confer this power with free, franc, and general administration, faculty to institute proceedings, take oath, substitute, elect, to revoke substitutes and to reëlect a new exonerating them in due form:—To have as firm, to re-tify and approve everything that may be made with relation to the present and may be done by the power of attorney and substitutes in its case, the persons appearing oblige themselves in accordance with the law. So they say, grant, and sign, being witnesses and

neighbors, of legal age and capacity as such: Don Juan Santos Garcia, and Don José Belen Tizol.

The grantors having read the foregoing power as well as the witnesses, rising off they right, they ratify it and approve it all of which, I, the Notary certify, signing, Concepción Laborde widow of Lopez, Eduardo Trujillo, Antonia Lopez, Juan Santos Garcia, José B. Tizol—Signed: Pedro R. Escalona.

The proceeding corresponds faithfully to the original power of its contents and if passed before me, and remains in the protocol in my care to which I refer and certify: And the Most Excellent Sir Don Pablo Ubarri continues by saying that using of his faculties to substitute that is contained in the inserted mandate by the present public document, he grants, that he substituted in all of its parts in the Solicitor (Procurador) of the Courts of this Capital and of the Hon. Real Audiencia of the Territory, Don Tomas Caballero y Osorio, to whom he transmits all of the faculties that were trans-
162 mitted to the gentlemen appearing in accordance with the inserted document. So he says: Grants and signs together with the instrumental witnesses: Don Juan S. Garcia, and Don Juan Ballesteros Nuñez, of this vicinity with legal capacity as such as read as it was done by all using off their right, it was ratified and approved, of all of which, I, the Notary certify:—Signed—Don Pablo Ubarri, Juan Santos Garcia, Juan Ballesteros Nuñez. Signed—Pedro R. Escalona.

The present first copy is a faithful — and conforms with the contents of the original which passed before me, and remains in the protocol of any care to which I make reference. It is corrected and to deliver to Don Tomas Caballero, I issue it in my papers and seal and other of the eleven in Porto Rico the same day of the grant.

(Signed) PEDRO R. ESCALONA.

163 When the said document, Exhibit "A", was offered, Counsel for Defendant contended that if the said exhibit was competent for any purpose its effect was to establish that judgment and proceedings of a competent court which determined the rights of Pablo Ubarri y Capetillo, father of Defendant, as against the estate of the said Jacinot Lopez y Martinez, and constituted a justification for his alleged acts as set forth in the complaint. In other words, that the matters set forth in the complaint were *res judicata.*

Plaintiff CONCEPCION LABORDE, the widow of the said Jacinto Lopez y Martinez, being called to the stand, testified as follows:

Mr. SWEET: You are the widow of Jacinto Lopez are you not?

A. Yes, sir.

Q. Your name is Concepción Laborde?

A. Yes, sir; y Rapp.

Q. During the settlement of the estate you received many letters did you not?

A. Yes, sir; letters from Mr. Pablo Ubarri, who was in charge.

Q. (Handing the witness a paper.) Without paying any atten

tion to this paper at all, can you look at this letter and tell the court and the jury who wrote it?

A. Mr. Pablo Ubarri. I recognise that signature. I cannot help recognising it at a glance, because I was so many years communicating with him.

Q. (Handing the witness another paper.) Please state if you recognise this letter and who wrote it.

A. That is the signature of Mr. Pablo Ubarri.

Q. Who wrote the letter?

A. Perhaps it was written by some clerk of his. All he did was to sign the letter. There were very few letters written by him, but the signature is his. The handwriting of the letter itself may be of his clerks or employees, but the signature is his. He was in the habit, or had the custom of having his letters written out for him.

Q. (Handing the witness another paper.) Can you tell who wrote this letter?

164 A. Isn't that signed.

Q. I don't know; she will have to see.

A. I can't see that very well.

Q. All right; we will not ask her to identify anything she cannot see.

A. That was a letter from Don Pablo which wasn't signed.

Q. No, she is mistaken about that.

A. If you tell me the address part of the letter, I think I will be able to tell you.

Mr. HAWKINS: I object if she cannot see the letter, to its being identified in any other way.

The witness asks to have the letter read.

The COURT: There is no objection to that.

(A portion of the letter is read to the witness in Spanish by the interpreter.)

A. Perhaps that letter was written by me at my house.

Mr. SWEET: I think it was, but we will withdraw it for the present.

A. That might have been written by me. I am not able to see very well, and by the beginning of the letter the fact might be brought to my mind.

Q. What is your age, Mrs. Laborde?

A. 73 years of age.

Q. Do you remember having seen this paper before?

A. That is a bill sent by Don Pablo for collection.

Q. To whom?

A. To me.

Q. State if you can tell the court and jury who that letter is from or who signed it. (Handing witness another document.)

A. Pablo Ubarri. (Witness points to the signature of Pablo Ubarri on the document.) I am very familiar with his signature, because I have received a good many thousands of his signatures.

Q. (Handing witness another document.) State if you know who signed that letter.

165 A. The same party, Pablo Ubarri. There are a lot of letters from him.

Q. (Handing witness another document.) State if you know who wrote that letter.

A. The same party, Mr. Pablo Ubarri. He wrote me a lot of letters.

Q. (Handing the witness another paper.) Examine that letter and state if you can tell who wrote it.

A. Don Pablo; the signature is Mr. Pablo's but he had a clerk, a man, to write the letter.

Q. (Handing the witness another paper.) State if you know who wrote this letter.

A. Pablo Ubarri also.

Q. Mrs. Lopez, would you know the signature of Mr. Matienzo if you were to see it; the guardian of the children.

A. I don't know, but I would like to have the letters brought to me to see if I can.

Q. (Handing the witness another paper.) Examine this letter, please, and see if you would know the signature to it.

A. I think it is Mr. Ubarri's, but I cannot hardly see it. The eyeglasses don't fit me very well.

The INTERPRETER: The signature confuses her.

Mr. SWEET: The trouble is because it is signed "Ubarri, by Matienzo." If she cannot identify it we will prove it by somebody else.

Q. (Handing the witness two other papers.) Do you recognise these signatures; these two.

The INTERPRETER: She gives Pablo Ubarri's name in both cases.

Judge SWEET: There is the same confusion there.

Q. Would you recognise the signature of Tomas Caballero?

A. Is there any letter from him.

Q. I think so, but would she recognise it.

A. I think so.

Q. (Handing the witness another paper.) See if you would recognise the signature to that letter.

A. I cannot see the signature of that letter; I cannot see it.

Q. (Handing the witness another paper.) See if you can see the signature to this letter.

166 A. It is Tomas Caballero's signature.

Q. (Handing witness another paper.) See if you know or can tell the signature to that letter.

A. I think it says Tomas Caballero.

Mr. HAWKINS: I object, your Honor, unless she knows.

The COURT: Of course it goes in that way.

Mr. SWEET: I shall bring some further evidence.

The witness was given a stronger pair of glasses and the last mentioned document was handed to her again. After examining it, the witness answered; Tomas Caballero.

Q. Ask her if she can make out any of the words.
A. "Muy señora mia y Amiga.
Q. (Handing the witness another paper.) See if you can identify hat signature.
A. Tomas Caballero.

Mr. SWEET: I will ask to have this marked for identification.

Q. (Handing the witness another paper.) Do you recognise that ignature, Mrs. Lopez?
A. Lopez Landron.

No formal offer was made by Plaintiffs offering in evidence the aid letters referred to in the testimony of the witness last-named, ut all of them were marked "for identification." The said letters re, in words and figures, as follows:

67 (*Translation.*)

EXHIBIT "G" FOR PLAINTIFFS.

PORTO RICO, *February* 21, 1885.

Mrs. Concepción Laborde, widow of Lopez.

DEAR MADAM AND FRIEND: I received your letter of the 20th and find the contents of the same very strange for you know that everything is done and the only thing that is wanted is money in order to erminate the matter and now you tell me that everything is delayed n account of me. I repeat to you that you know it is on account of ack of money.

With respect to the power of attorney, that you say you will withdraw from me, you may do so whenever you please.

With respect to the attachment for taxes, the Mayor cannot wait ny longer, if he does so, he will get in trouble, so that I see no olution possible without money.

Yours truly,

PABLO UBARRI.

68 (*Translation.*)

EXHIBIT "R" FOR PLAINTIFFS.

P. R., *April* 11, 1885.

Mrs. Lopez (widow).

MY DEAR FRIEND: I received your esteemed favor of the 7th, and was very sorry not to have been able to see you, but I was extremely busy.

I observe Mr. Rós conduct and I doubt whether I can give in to your wishes in removing him from there, because it does not depend n me; but I forward you a letter, that you may read, seal it, and orward the same to him, and with this I believe he will not trouble ou any more.

I feel very sorry over your troubles, but you should bear them with atience.

Your friend,
(Signed)

PABLO UBARRI.

169 (*Translation.*)

EXHIBIT "S" FOR PLAINTIFFS

PORTO RICO, *May* 5, 1885.

Mrs. Concepción Laborde, widow of Lopez.

MY DEAR LADY AND FRIEND: Trujillo was here and told me that he wishes that the testamentary proceedings be settled in a friendly way for which I desire you to appoint a person and he another, and all of this to be settled within the family, and I advise you to do so and in that way, everything will be all right and quick because that is convenient to you.

I have received your favor enclosing that of Mr. Ros of which I have remained advised.

Respectfully,

(Signed) P. UBARRI.

170 (*Translation.*)

EXHIBIT "T" FOR PLAINTIFFS.

P. R., *May* 27, 1885.

Mrs. Concepción Laborde, Widow of Lopez.

MY DEAR LADY AND FRIEND: I beg of you to come here on Monday for sure, in the morning, as Mr. Trujillo will also be here in order to finish the matter of the testamentary proceedings.

Yours respectfully,

(Signed) P. UBARRI.

171 (*Translation.*)

EXHIBIT "F" FOR PLAINTIFFS.

PORTO RICO, *June* 17, 1885.

Mrs. Concepción Laborde, Widow of Lopez.

DEAR MADAM AND FRIEND: I received your letter of the 14th, and Acuña says to me that the share belonging to your stepdaughter, cannot now be delivered to her, but as soon as the testamentary proceedings are settled.

It is not necessary to make an inventory; the one made is sufficient, but if it is necessary, say what is missing in the inventory made, in the nature of cattle &c. And you will also say the debts; all are sending in their statements of all that is due them. The sooner they send it the better.

Yours truly, P. UBARRI.

172 (*Translation.*)

EXHIBIT "J" FOR PLAINTIFFS.

P. R., *June* 30, 1885.

Mrs. Concepción Laborde, Widow of Lopez.

MY DEAR MADAM AND FRIEND: There is no objection in that you give your conformity to the matter of your step-son (entenado). This would help to terminate the testamentary proceedings.

Yours truly, PABLO UBARRI.

173 (*Translation.*)

EXHIBIT "P" FOR PLAINTIFFS.

P. R., *July* 3, 1885.

Mrs. Concepción Laborde, Widow of Lopez.

MY DEAR MADAM AND FRIEND: I received your favor the 1st and believe that it will not be necessary for you to come to this city, you may sign the document and be careful as I consulted with Attorney Acuña.

There is no right to complain to the Intendencia, all you have to do is to make a return to the Alcaldia (Mayor's office) stating that it has not agriculture, that the sawing machine is not working, that everything is paralyzed while the testamentary papers are being fixed, that the only thing you have is the care of cattle, all of which you call the Mayor's attention so that he may in his turn call the attention of the City Council and in that way we can do something.

Be patient, I will not abandon you and your children.

Your friend, PABLO UBARRI.

174 (*Translation.*)

EXHIBIT "C" FOR PLAINTIFFS.

PORTO RICO, *July* 27, 1885.

Mrs. Concepción Laborde de Lopez.

DEAR MADAM AND FRIEND: I received your letter of the 24th wherein you state the distribution of taxes have been posted to the public. The protest should be sent to the Council there, and in case no justice is done there, you can appeal to the "Diputacion" or the "Intendencia," if it is a question as the case may be, but the appeal must first be made to the Council, and then to the proper authority.

I see, and I am glad of it, that you accept Mr. Davila; I will let you know when they will go. I desire to end this matter immediately.

Yours truly,

(Signed) P. UBARRI.

175 (*Translation.*)

EXHIBIT "H" FOR PLAINTIFFS.

PORTO RICO, *Aug.* 22, 1885.

Mrs. Concepción Laborde, Widow of Lopez.

DEAR MADAM AND FRIEND: I received your letter of the 20th and I am glad of the cutting down of your portion of the taxation. In so far as Don Quintin is concerned you tell him to have patience the same as the rest.

That as soon as the testamentary proceeding is terminated, he as well as all others, will be paid, because paying is before anything else; but this cannot be done until what has been said is done.

All that is pending now is the arrival of Larrinaga, that he may go to do the appraisement. He is in Ponce and will get here any time.

Have patience, everything will be done in time.

Yours truly,

P. UBARRI.

176 (*Translation.*)

EXHIBIT "O" FOR PLAINTIFFS.

P. R., *September* 7, 1885.

Mrs. Concepción Laborde Widow of Lopez.

MY DEAR LADY AND FRIEND: The assessors, Larrinaga and Dávila will go next Wednesday; send the horses to Bayamon in the morning as early as possible and notify Trujillo so that he may attend if he wishes.

This is all I have to say to you to-day.

Your friend.

(Signed) P. UBARRI.

177 (*Translation.*)

EXHIBIT "N" FOR PLAINTIFFS.

PORTO RICO, *November* 26, 1885.

Mrs. Concepción Laborde Widow of Lopez.

MY DEAR LADY AND FRIEND: I received your favor of the 24th and those enclosed I delivered to your sister.

The inventories and assessments are ready, the partition is being made to see if everything is finished at last, which I desire it so much, we will have a meeting, to see if we can get the creditors to accept land in payment of their credits which will be most convenient to the succession.

Always yours,

(Signed) P. UBARRI.

On Thursday of next week it will be necessary for you to come over in order to attend a meeting at the home of Mr. Acuña and to agree on what may be convenient for the testamentary proceedings. Trujillo, you, Echeveste and this servant of yours will be present so I beg of you not to be absent. The hour of the meeting will be 2 P. M.

Again.

178 (*Translation.*)

EXHIBIT "M" FOR PLAINTIFFS.

Mrs. Concepción Laborde.

MY DEAR LADY AND FRIEND: Kindly bring with you Thursday when you come, the plans of the Plantation.

Yours,

(Signed) P. UBARRI.

Nov. 28/85.

179 (*Translation.*)

"L."

P. R., *January* 20, 1886.

Mrs. Concepción Laborde.

DEAR MADAM AND FRIEND: After I went to see the lands at the price they are assessed and the condition they are in, I have desisted from taking any money in land, because after what I have said I shall have to spend another fortune in putting them in good condition, and besides it looks very bad for me to go and see those lands. I will take the sewing mill, if anything, as we arranged at the last meeting had. What we need is money to terminate the testamentary proceedings. If this is not forthcoming it will never be terminated. You will decide.

Yours truly,

PABLO UBARRI.

180 (*Translation.*)

EXHIBIT "U" FOR PLAINTIFFS.

This account referred to in letter of Pablo Ubarri to Mrs. Concepcion Laborde, widow of Lopez, dated *Feb.* 13, 1887.

Mr. Jacinto Lopez, His Account Current With Pablo Ubarri.

1885.		Debit.	Credit.
April 1.	Liquidation in my favor as per account this day.....	$24,557.24	
Jan. 31.	Interest of $24,557.24 from the 1st of April, 1885, to the 31st of January of the year 22 months @ 1%.....	5,202.25	
" "	" For a machine to saw wood with its appurtenances in bad condition.....	.....	$2,000.00
" "	" For 3 months' interest of $2,000.00 of the machine to saw wood also to the 31st of the month...	.....	60.00
	Balance	.....	27,699.49
	Sums.....	$29,759.49	$29,759.49
1887.			
January 31.	Balance of account.....	$27,699.49	

P'to Rico, date above.

181 (*Translation.*)

Mrs. Concepcióc Laborde, (Widow of Lopez), Dorado.

MY DEAR MADAM AND FRIEND: I received your esteemed letter without date, and I am going to answer. With respect to the machinery, I agreed with San Juan that I would not take the machinery at the assessed price, because I knew that it was in bad condition; that I would bring it on the condition that I would have it examined, and that when its condition should be examined then I would arrange matters. And thus San Juan went to see it, and he saw it and we agreed that I should credit you $2,000.00.

Larrinaga assessed it in $3,000.00 calculating that it has cost 5, and that it had all the straps (correas) etc. and that it was in good condition; but unfortunately it was not so. But if you want to have the machinery assessed now and the condition of the machinery examined there is no objection to this.

With respect to the account and interests, I must say to you that the interests have been agreed with your deceased husband at one per cent. and so it was set forth in the account signed by him and

in the one approved by all in the testamentary proceeding, so that I find it very strange your resolution and the person who advises you to do this I think is not well informed; however you will decide what to do and I am only waiting for your answer to have recourse to the Court in order to collect the debt for I never expected you would take such a resolution. You will excuse my frankness and believe me to be your true friend.

(Signed) P. UBARRI.

February 13, 1887.

182 (*Translation.*)

EXHIBIT "Q" FOR PLAINTIFFS.

P. R., *June* 23, 1887.

Mrs. Concepción Landró (?) (Widow of Mr. Jacinto Lopez), Dorado.

MY DEAR MADAM AND FRIEND: I received your esteemed favor of the 21st inst. wherein you proposed that I should see Counsel Mr. Landron. I have no objection to see him and arrange matters with him; but feel very sorry that your children's bread (means of support) be eaten up by the Court, but you have so chosen.

Yours truly, P. UBARRI.

183 (*Translation.*)

EXHIBIT "I" FOR PLAINTIFFS.

Mrs. Concepcióc Laborde, Widow of Lopez, Dorado.

DEAR MADAM AND FRIEND: I will again repeat to you that you are badly advised by some one who wants to swallow up the children of Don Jacinto Lopez (deceased) and the creditors; and I will give him a job. You see Trujillo; He ought to know something of what is going on. Be on the alert. This advice is given you by your friend and an honest man, the head of a family.

I am now comparing the signature of your husband (deceased) for if this was not his then I would be a forger, and I don't know whether I can let this pass by. If I let it go it is because an innocent person may be punished.

Yours truly, P. UBARRI.

Aug. 18/87.

184 (*Translation.*)

"K."

Mr. Rafael Lopez Landron.

DEAR SIR AND FRIEND: I have thought over what we talked last night, and I think it unnecessary to proceed to the liquidation of the account. Before this is done it is necessary that I should know

at what value I am to get in payment "Monte Rey," and the "Oficiales" and the balance of the land left to the widow adjudicated for the payment of the creditors, classifying them all; and after the deeds etc., are drawn is that the liquidation comes in.

This is all I have to say on the subject.

Yours truly, P. UBARRI.

June 6 '88.

185 The witness Pedro Lopez, called in behalf of the Plaintiffs, testified only as to the amount, character and value of the estate left by Jacinto Lopez Martinez at the time of his death, and he identified the signature of Pablo Ubarri Capetillo upon the letters, being Exhibits "C," "F," "G," "H," "I," "J," "K," "K," "L," "M," and "N." See letters immediately preceding this sheet.

The witness Ferdinand Cestera, called in behalf of Plaintiffs, testified only to the number of head of cattle owned by Jacinto Lopez y Martinez at the time of his death.

CRUZ ALEGRIAS, called as witness for the Plaintiffs, testified as follows:

Q. State your name?

A. Cruz Alegrias.

Q. Age?

A. Fifty-two years.

Q. And residence?

A. At Barceloneta.

Q. Where did you reside in 1884 and 1885?

A. At Dorado.

Q. Were you the Mayor of Dorado about that time?

A. Yes, sir.

Q. Did you know Jacinto Lopez during his life-time?

A. Yes, sir; a great deal; very much.

Q. Were you the Mayor of Dorado during the sale of the property of Mr. Lopez' estate for taxes after his death?

A. I am not sure if I was or not. If you tell me the year when that public sale took place, I will tell you.

Q. I will ask you to examine these letters and ask you if you wrote them (handing several letters to the witness).

A. Yes, sir.

Q. Look at all of them.

The COURT: Does the man say that he wrote the letters?

Mr. SWEET: He said so.

A. (Witness hands over a letter.) Yes, sir; this is one also (handing over a second letter); that is also my handwriting
186 (handing over a third letter); that is also my handwriting (handing over a fourth letter); that is not (handing over another letter); and that also is not mine (handing over another letter).

The COURT: Do you want to offer these now?

(Counsel for the Defendants asks for time to examine these letters and the examination of the witness is proceeded with along other lines).

Q. Will you be kind enough to tell the Court and the jury such facts and circumstances as were connected with the bidding in of this property of Jacinto Lopez sold for taxes?

A. I sold at auction the lands in behalf or in the name of Mr. Pablo Ubarri. I asked for bids.

The COURT: I don't apprehend that Mr. Pablo Ubarri had anything to do with the sale of the property for taxes.

Mr. SWEET: I will ask the Interpreter if the witness said that.

The INTERPRETER: He said: I asked for bids in behalf of Pablo Ubarri.

Q. Did you conduct the sale of the property that was sold for taxes?

A. Of lands; yes, sir.

Q. Who bought the property, if you know?

A. To me for Don Pablo.

Q. Do you mean by that that you sold the lands as the official representing Dorado and that you purchased them for Mr. Ubarri?

A. I did not buy them. I sold at auction. I sold them at auction for taxes.

Q. Yes, you had sold the land at auction for taxes.

A. The "Alcalde" or Mayor asked for bids and I appeared as one of the bidders.

Q. You appeared as one of the bidders?

A. Yes, sir.

Q. In whose behalf did you appear?

A. Of Pablo Ubarri.

Q. To what extent did you buy those lands that were sold for taxes; how many acres; how many pieces?

A. I don't remember if at the beginning were 200 or 400 acres; the portion connected with San Antonio.

187 Q. You bought all that were sold?

A. With regard to the lands—yes.

Q. Do you remember anything as to the price for which those lands were sold?

A. I don't know if it was for taxes; I think it was for the amount of the taxes.

Q. Will you explain to the Court and jury the steps that you took to advertise and sell this property for taxes; for instance, you advertised once.

A. The Mayor's office; I didn't.

Q. That is what I mean, the municipality.

A. Yes, sir.

Q. And if no bids were received, you advertised twice, again?

A. First the appraisement of the property was made and it was advertised. In view of the fact that nobody bid, again or once more with a discount of a certain percentage of the value it was advertised, and afterwards a third time for the taxes.

Q. Now this was sold under the third call or offer, was it not?
A. I cannot say, but I think so. It is so many years since.
Q. And as you remember, the land was sold for taxes, for what the taxes called for?
A. As time elapsed, why, the attachment was increased.
Q. Attachment for what?
A. For the taxes due.
Q. And it finally resulted, as I believe he stated, in his purchasing all of the property?
A. Yes, sir.
Q. For Mr. Ubarri?
A. The whole plantation was not sold for taxes.
Q. No, I mean that portion that was sold for taxes.
A. Yes, sir.
Q. Do you have any remembrance of the proportion of cattle or horses that were sold for taxes?
188 A. I don't know. I know they were sold because I was there, but I do not remember the number, the amount.

The COURT: Was all that they had there sold, or half of it sold, or some other fraction?

A. I think that the whole thing. Everything that was there was sold, horses and all.

Mr. SWEET: For taxes.

A. I think so.
Q. Who bid in the horses and cattle that were sold; do you remember?
A. I think one of them was Mr. Pedro Martorel.
Q. Who was obliged under the law to order the attachment of property for taxes?

Mr. HAWKINS: I object, Your Honor. That is a question of law for the Court to decide.
The COURT: Judge Sweet knows that as well as anybody.
Mr. SWEET: I know that, but I don't know that there is any objection to having a law-officer state the facts.
The COURT: It cannot make very much difference, Mr. Hawkins.
Mr. HAWKINS: I withdraw the objection.

Q. (Was read by the Stenographer).
A. The "Alcalde," the Mayor.
Q. And he also ordered the appraisement?
A. He ordered the appraisement and appraisers were appointed.
Q. And you were the Mayor, the "Alcalde" at the time?
A. Not when the lands were sold. I was Mayor in 1884 and 1885; not 1885 and 1886.
Q. Were you Mayor when the lands were attached for taxes?
A. No, sir; I have been Mayor and all those things are so near to each other that I am confused or mixed up; the time when I was Mayor and when I was not are so close together that I am confused.

Q. Is this what you mean—that your occupation of the office in connection with these events are so closely related that you do not remember whether you were Mayor at the time?

189 The COURT: He has already stated so.
Mr. SWEET: Then I will not press that.

Q. I will ask you again to state the years that you were Mayor?
A. I think that I was inaugurated at the latter part of 1884 and held that office until 1886.
Plaintiff offered in evidence exhibit "C" "F" "G" "H" "I" "J" "K" "L" "M" and "N," identified by witness.

190 (Copy.)

EXHIBIT "C" FOR PLAINTIFFS FOR IDENTIFICATION.

PORTO RICO, *July* 27, 1885.

Mrs. Concepción Laborde de Lopez.

DEAR MADAM AND FRIEND: I received your letter of the 24th wherein you state the distribution of taxes have been posted to the public. The protest should be sent to the Council there, and in case no justice is done there, you can appeal to the "Diputación" or the "Intendencia," if it is a question as the case may be, but the appeal must first be made to the Council, and then to the proper authority.
I see, and I am glad of it, that you accept Mr. Davila; I will let you know when they will go. I desire to end this matter immediately.

Yours truly,
(Signed) P. UBARRI.

O. K.
M. S. GEIGEL.

191 (Copy.)

"F" FOR PLAINTIFFS, FOR IDENTIFICATION.

PORTO RICO, *June* 17, 1885.

Mrs. Concepción Laborde, Widow of Lopez.

MY DEAR MADAM AND FRIEND: I received your letter of the 14th, and Acuña says to me that the share belonging to your step-daughter cannot now be delivered to her, but as soon as the testamentary proceedings are settled.
It is not necessary to make an inventory; the one made is sufficient, but if it is necessary say what is missing in the inventory made, in the nature of cattle & And you will also say the debts; all are sending in their statements of all that is due to them. The sooner they send it the better.

Yours truly, P. UBARRI.

O. K.
M. S. GEIGEL.

192 (Copy.)

"G" FOR PLAINTIFFS.

PORTO RICO, *February* 21, 1885.

Mrs. Concepción Laborde, Widow of Lopez.

DEAR MADAM AND FRIEND: I received your letter of the 20th and I find the contents of the same very strange for you know that everything is done and the only thing that is wanted is money in order to terminate the matter, and now you tell me that everything is delayed on account of me. I repeat to you that you know it is on account of lack of money.

With respect to the power of attorney, that you say you will withdraw from me, you may do so whenever you please.

With respect to the attachment for taxes, the Mayor cannot wait any longer, if he does so he will get into trouble, so that I see no solution possible without money.

Yours truly, PABLO UBARRI.

O. K.
M. S. GEIGEL.

193 (Copy.)

"H" FOR IDENTIFICATION FOR PLAINTIFFS.

PORTO RICO, *August* 22, 1885.

Mrs. Concepción Laborde, Widow of Lopez.

DEAR MADAM AND FRIEND: I received your letter of the 20th and I am glad of the cutting down of your portion of the taxation. Insofar as Don Quintin is concerned you tell him to have patience the same as the rest. That as soon as the testamentary proceeding is terminated he as well as all others will be paid because paying is before anything else; but this cannot be done until what has been said is done.

All that is pending now is the arrival of Larrinaga, that he may go do the appraisement. He is in Ponce and will get here any time. Have patience, everything will be done in time.

Yours truly, PABLO UBARRI.

O. K.
M. S. GEIGEL.

194 (Copy.)

"I" FOR PLAINTIFFS, FOR IDENTIFICATION.

Mrs. Concepción Laborde, Widow of Lopez, Dorado.

DEAR MADAM AND FRIEND: I will again repeat to you that you are badly advised by some one who wants to swallow up the chil-

dren of Don Jacinto Lopez (deceased) and the creditors; and I will give him a job. You see Trujillo; He ought to know something of what is going on. Be on the alert. This advice is given you by your friend and an honest man, man the head of a family. I am now comparing the signature of your husband (deceased); for if this was not his then I would be a forger, and I don't know whether I can let this pass by. If I let it go it is because an innocent person may be punished.

Yours truly,

P. UBARRI.

August 18/87.

O. K.
M. S. GEIGEL.

195 (Copy.)

"J" FOR PLAINTIFFS, FOR IDENTIFICATION.

PORTO RICO, *June* 30, 1885.

Mrs. Concepción Laborde, Widow of Lopez.

MY DEAR MADAM AND FRIEND: There is no objection in that you give your conformity to the matter of your step-son (entenado). This would help to terminate the testamentary proceedings.

Yours truly,

PABLO UBARRI.

O. K.
M. S. GEIGEL.

196 (Copy.)

"K."

Mr. Rafael Lopez Landron.

DEAR SIR AND FRIEND: I have thought over what we talked last night, and I think it unnecessary to proceed to the liquidation of the account. Before this is done it is necessary that I should know at what value I am to get in payment "Monte Rey," and the "Oficiales" and the balance of the land left to the widow adjudicated for the payment of the creditors, classifying them all; and after the deeds, etc., are drawn is that the liquidation comes in.

That is all that I have to say on the subject.

Yours truly,

P. UBARRI.

June 6/88.

O. K.
M. S. GEIGEL.

197 (Copy.)

"L."

PORTO RICO, *January* 20, 1886.

Mrs. Concepción Laborde.

DEAR MADAM AND FRIEND: After I went to see the lands at the price they are assessed and the condition they are in, I have desisted from taking my money in land, because after what I have said I shall have to spend another fortune in putting them in good condition, and besides it looks very bad for me to go and see those lands. I will take the sewing mill, if anything, as we arranged at the last meeting had. What we need is money to terminate the testamentary proceedings. If this is not forthcoming it will never be terminated. You will decide.

Yours truly,

PABLO UBARRI.

O. K.
M. S. GEIGEL.

198 (Copy.)

EXHIBIT "M" FOR PLAINTIFFS.

Mrs. Concepción Laborde.

MY DEAR LADY AND FRIEND: Kindly bring with you, Thursday when you come, the plans of the Plantation.

Yours,
(Signed) P. UBARRI.

November 28/85.

O. K.
M. S. GEIGEL.

199 (Copy.)

EXHIBIT "N" FOR PLAINTIFFS.

PORTO RICO, *November* 26, 1885.

Mrs. Concepción Laborde, Widow of Lopez.

MY DEAR LADY AND FRIEND: I received your favor of the 24th and those enclosed I delivered to your sister.

The inventories and assessments are ready, the partition is being made to see if everything is finished at last, which I desire it so much, we will have a meeting, to see if we can get the creditors to accept land in payment of their credits which will be most convenient to the Succession.

Always yours,
(Signed) P. UBARRI.

On Thursday of next week it will be necessary for you to come over in order to attend a meeting at the home of Mr. Acuña and to agree on what may be convenient for the testamentary proceedings, Trujillo, you, Echeveste and this servant of yours will be present so I beg of you not to be absent. The hour of the meeting will be 2 P. M.

Again.

O. K.

M. S. GEIGEL.

200 The witness Julian Fontenals y Dominguez, called by Plaintiffs, testified that he was the son-in-law of Tómas Caballero. He identified the signature of the said Caballero to the following letters, which were offered in evidence, and no further testimony was given by him:

201 (*Translation.*)

EXHIBIT "X" FOR PLAINTIFFS.

PORTO RICO, *December* 20/84.

Mrs. Concepción Laborde, Widow of Lopez, Dorado.

DEAR MADAM AND FRIEND: To-day I had the pleasure of seeing your sister who told me of your desire to institute the testamentary proceedings of your deceased husband and in its consequence I informed her that all of the documents for said purpose are in the hands of Attorney Figueras who was entrusted with them by Attorney Soler.

But, as it is necessary to incur in some expenses for it, I told her to ask you for twenty five or thirty dollars to face the most important ones of which remittance I remain waiting.

As of all of the property existing, there has to be made a judicial inventory, it would be well to start by forming a list of them if you have not it already, so that when the moment arrives that it is disposed of by the Hon. Judge, the proceedings may become easier; and for you guidance I say to you that you should not deliver anything to anybody until you are ordered by the Ho. Judge who may take charge of the intestate proceedings and that you should limit yourself to take care and preserve what was left at your husband's death as you lack authority to do the contrary.

Yours respectfully, TOMAS CABALLERO.

202 (*Translation.*)

EXHIBIT "W" FOR PLAINTIFFS.

Tomas Caballero, Solicitor of the Courts, San Juan, Porto Rico.

JULY 3/85.

Mrs. Concepción Laborde, Dorado.

MY DEAR LADY AND FRIEND: Enclosed you will find despatch for that Municipal Judge so that the minors set forth in same designate curator who may represent them in the intestate proceeding of your deceased husband, about this particular I have spoken to Don Pablo and he suggested to me to tell you in his name, to select Don Julian Matienzo.

Yours respectfully, TOMAS CABALLERO.

203 (*Translation.*)

EXHIBIT "V" FOR PLAINTIFFS.

Tomas Caballero, Solicitor of the Courts, San Juan, Porto Rico.

JULY 10TH, 1885.

Lady Concepción Laborde, Dorado.

MY DEAR LADY AND FRIEND: From your favor of the 7th inst. I have withdrawn the despatch relative to the election of the Curator Mr. Matienzo, selected by the minors, in order that he may represent them in the intestate proceedings of their father Don Jacinto.

I remain, Yours respectfully and friend,

TOMAS CABALLERO.

204 The Plaintiff, JACINTO LOPEZ LABORDE, being called by his counsel, a paper was submitted to him and the following proceedings were had:

Direct examination by MR. SWEET:

Q. I will ask the witness to state what this paper is. (The paper is first shown to Counsel on the other side and to the Court.) Your honor will remember that I showed that paper to the old lady this morning and her recollection was very vague about it.

Q. (Handing paper to the witness.) State, if you know, what this paper is. I ask you to state if you know what it is.

A. Yes, sir.

Q. Please explain to the Court and jury what it is. Who wrote it, do you know?

A. I, myself.

Q. Under what circumstances, and for whom?

A. This is a rough draft of a letter written by me under instructions by my mother, inasmuch as when she had any letter to write I did the writing for her and afterwards I would read them to her

and if she would agree to them then I would write them out on a clean sheet, and this is one of the drafts, rough drafts, of letters that I have written. This is my own handwriting.

Q. Well, what was the letter for? What was the purport of it?

A. I will have to read it. I have written a good many of them. I would have to read the contents to be able to tell you what it is.

Mr. HAWKINS: I certainly object to a mere copy made out by hand as purporting to be a copy of a letter which was mailed to Pablo Ubarri.

The COURT: He will have to show that he knows that a letter drafted on that was sent.

Mr. HAWKINS: Not only that, but that it was an exact copy.

The COURT: Judge Sweet knows that rule as well as anybody.

Q. Now you have read this letter?

A. Yes, sir.

Q. What was done with this letter? Did you keep it?

A. The letter, of which that is a draft, was sent to Mr. Pablo Ubarri.

205 Q. How do you know?

A. Because I myself sent it.

Mr. SWEET: Now I offer it in evidence.

Mr. HAWKINS: I object unless there is some proof that it was sent. The mailing of a letter is presumption that it was received.

Mr. SWEET: We have already read Pablo Ubarri's reply to it.

The COURT: It may go in for what it is worth.

Mr. HAWKINS: Your Honor allow an exception.

Mr. SWEET: This is the letter to which he replied that he was sorry she had taken this course.

The COURT: What is the date of it?

Mr. SWEET: It is not dated. I can show the date approximately from the date of the reply.

Q. Do you remember the date of it?

A. No, sir.

The COURT: Well, about when was it?

A. Before we filed suit against Ubarri; that marks the beginning of the law suit.

Mr. SWEET: Before you filed suit against Ubarri, or before Ubarri filed suit against you?

A. Before Ubarri filed suit against us.

Mr. SWEET: That date will be made clear before we get through.

The letter in question, which was addressed to Pablo Ubarri and signed C. L. V. de L., from Dorado, without any date, was then read to the jury and marked Exhibit "Y" for the Plaintiffs.

206 (*Translation.*)

EXHIBIT "Y" FOR PLAINTIFFS.

Dorado.

Mr. Pblo Ubarri:

MY DEAR SIR AND FRIEND: In view of your letter I have to say to you that the attitude assumed by you is strange as there is nothing in my previous letter which may have caused it. I have never refused to pay you or anybody else, provided the documents presented to me are just and legal and acknowledged.

Now then; you have presented to me a simple account on any sort of paper, without signature or document to justify same, and as it is natural it was not possible for me in any manner, only by seeing said account, to acknowledge a charge of such an important amount. If this is the reason why you intend to take the matter to Court, I have to say for my part: I will not go back until you have complied with the duties of legality in presenting authentic documents.

I am sorry we have reached such a stage but it is my duty.

I remain, C. L. V. DE L.

No further testimony was given by the said witness.

207 JOAQUIN MATIENZO, being called by the Plaintiffs, identified three documents executed by Pablo Ubarri Capetillo (Page 58 of Transcript of Testimony), which documents were offered in evidence and read to the jury.

This was all of the evidence given by the said witness.
(See pages 69 to 71.)

Thereupon Plaintiffs offered in evidence and read to the jury the following documents (See pages 72 to 84):

The Witness CRUZ ALEGRIAS, being recalled by Plaintiffs, testified, as follows:

Q. What is the paper now shown you?

A. This is another attachment at Dorado for taxes of the years 1885 and 1886.

Q. An attachment issued by what authority?

A. By the Alcalde of Dorado.

Q. Now after that attachment was issued, then what was done?

A. Why the property was sold at auction.

Q. Did not somebody take possession of it in the name of the Alcald*ia* after the attachment was issued?

A. After the embargo or the attachment a Receiver is appointed, and I was appointed Receiver.

Q. And then the property was sold, was it?

A. Yes, sir.

Q. Under the regular order?

A. Yes, sir.

Q. Who bid the property in?
A. Nobody appeared; no bidders were present.
Q. Then what did you do?
A. The sale was again advertised.
Q. Well, what followed?
The COURT: Nobody bid that time?
A. No, sir.
208 Mr. SWEET: Was there still another advertisement?
A. Yes, sir.
Q. Did anybody appear at that time?
A. Then it was sold at auction to secure the payment of taxes due.
Q. Who bid it in? Who bought it?
A. Well, I appeared in the name of Mr. Ubarri.
Q. And did you buy it?
A. Yes, sir.
Q. Did Mr. Ubarri instruct you to appear there and buy the property?
A. Yes, sir.

Mr. SWEET: I offer this in evidence.
The WITNESS: He had already an attachment placed on that "finca."
Mr. HAWKINS: I have no objections to this document as introduced.
The COURT: Wait until I find out one fact here before we leave it. This man just answered that this man Ubarri already had an attachment on this property. Find out about that, whether it was a different one from the one he has just referred to.

Q. You said that Mr. Ubarri already had an attachment on the property?
A. But that property was owing taxes.
Q. Then the attachment for taxes was paramount in right to the attachment he already had?
A. Yes, sir; provision should be made for this attachment for taxes.
The COURT: Did this man Ubarri have an outstanding attachment against this property in a suit of his own before that?
A. Yes, sir; and I was the judicial receiver.
Q. And he instructed you to buy this in to protect the other attachment?
A. Inasmuch as the property was attached or embargoed, I bid it in. He gave me instructions to put in a bid for him.
Mr. SWEET: Well, as a matter of fact, that was all you knew about it, was it not, that he instructed you to bid it in for him?
A. Yes, sir.
The COURT: Now this man Ubarri was all this time Man-
209 ager or Guardian of the estate?
Mr. SWEET: Yes, sir.
Mr. HAWKINS: I have no objection to that as far as it is a record of the acts of the "Ayuntamiento," of the Municipality, but I see that at the end it purports to be a record of something that Pablo Ubarri did, and as such I certainly object to it,—something that he

did in the way of presenting some sort of a petition to the "Ayuntamiento." A certificate from the Municipality is not evidence as to what he did in that respect. I think the Plaintiffs should prove that Pablo Ubarri did this, by some other method.

The COURT: You may read to that point and call the Court's attention to it, and I will rule on it.

(The reading of the document in question to the jury by Counsel for the Plaintiffs is started and upon reaching the point in dispute Counsel for the Defendants suggests that the reading of the document be continued to the end.)

Mr. HAWKINS: My objection, if Your Honor please, to that part just read is that that record is sufficient evidence, having been issued by the Keeper of the Records of the Alcaldía, of the Municipality, of the acts of the Municipality, and as to what the Municipality did, but as to the evidence as to what Pablo Ubarri did, whether he presented that writing or not, it is not sufficient evidence. Whether Pablo Ubarri presented such a writing as that should be proved by competent evidence.

The COURT: How can you distinguish this part from the other part?

Mr. HAWKINS: I will withdraw the objection.

The document was then marked Exhibit "Cc" for the Plaintiffs.

Mr. SWEET: I will now offer in evidence the letters which this man Cruz Alegrias identified as his own. (One of the letters in question was then read to the jury.)

Mr. HAWKINS: I object to the admission of the letter because there is no date.

Mr. SWEET: I will not hand it in for marking until I identify it and determine the date.

210 A letter dated August 16, 1886, written by Cruz Alegrias at Dorado to Mrs. Concepción Laborde was then read to the jury and marked Exhibit "Dd" for the Plaintiffs.

A letter dated February 25, 1886, from Cruz Alegrias to Mrs. Concepción Laborde was then read to the jury and marked Exhibit "Ee" for the Plaintiffs.

Q. (Handing some letters to the witness.) These letters of yours are not dated, Mr. Alegrias; can you give the Court and jury some idea of when they were written?

A. These must have been written at the time that I was Mayor for the reason that they speak about taxes.

The COURT: That is from 1884 to 1886?

Mr. SWEET: From 1884 to 1886.

Q. Well, now, could you state probably which year from the tone of the letter?

A. (Handing back a letter.) This must have been written in 1885 or 1886.

Q. Would an examination of these letters which are dated help you any in judging of those dates?

The COURT: Why isn't that sufficient, Judge Sweet?

Mr. SWEET: It is for me, but I want to satisfy Brother Hawkins.

A letter from Cruz Alegrias addressed to Mrs. Concha was then marked Exhibit "Ff" for the Plaintiffs.

A letter from Cruz Alegrias addressed to Mrs. Concepcion L. de Lopez was next marked Exhibit "Gg" for the Plaintiffs.

Q. (Handling the witness a document.) Examine that paper and tell us what it is.

A. It is a certified copy of a public sale of some lands in Monte Rey.

Q. Tell the Court and jury what lands they were.

A. Of Monte Rey.

Q. To what estate did they belong?

A. To the finca called "Monte Rey."

Q. To what general estate?

211 A. To Mr. Jacinto Lopez.

The COURT: Or his Sucesión?

A. Or his Sucesión.

Mr. SWEET: What, if anything, did you have to do with the attachment and sale or purchase of this land?

A. I was the receiver of that property and afterwards, subsequently, the purchaser at auction.

Q. Did you purchase it for yourself, or for whom?

A. For Mr. Ubarri.

Q. Did Mr. Ubarri instruct you to buy it?

A. Yes, sir.

Mr. SWEET: I offer this in evidence.

No objection is interposed to the document and it is read to the jury and marked Exhibit "Hh" for the Plaintiffs.

Q. What was the land attached for?

A. For the payment of taxes.

Q. Do you remember how much?

A. I don't remember how much.

Q. But you remember that the property was sold and that you bid it in for Pablo Ubarri?

A. Yes, sir.

Q. Did you pay over any money for it?

A. The deed was afterwards made out at Vega Alta.

Q. But you didn't pay any money for it?

A. I didn't deliver any money or pay any money.

Cross-examination by Mr. HAWKINS:

Q. When you made this attachment that you have just spoken of, were you at that time "Alcalde"?

A. No, sir; that referring to Vega Alta was of another town.

Mr. SWEET: I didn't understand that he was Mayor at the time that he bought in this property.

No further testimony was given by this witness.

212 (*Translation.*)

EXHIBIT "Z" FOR PLAINTIFFS.

PORTO RICO, *February* 16, 1887.

Mrs. Concepión Laborde Widow of Lopez, Dorado.

VERY RESPECTABLE LADY: I have before me a letter from you bearing no date, doubtless an involuntary omission, taking notice of its contents, I say to you that having accepted the place of Curator of minors, it was for the formation and arrangement of the Testamentary proceedings having fulfilled that object, I do not know in what I may have failed in the compliance of my office, however, you may act in the way you think best.

Always at your service,

Yours respectfully, JULIAN MATIENZO.

213 (*Translation.*)

EXHIBIT "AA" FOR PLAINTIFFS.

SAN JUAN, P. R., *Nov.* 19, 1878.

Mr. Jacinto Lopez, Dorado.

DEAR SIR AND FRIEND: After having turned over to you the accounts (closed) of the 28 Oct. last showing a balance in my favor of $15,362.97, I observed I failed to include the ten pair of wheels for cars, which I ordered at Arroyo, to your account, and which were sent to you, the value of which is $55,988, as debited in your account.

So as to keep the accounts in proper shape I request you to let me know whether you are agreeable with this account, otherwise let me know the objections.

Yours truly,

PABLO UBARRI,
Pr. J. MATIENZO.

214 (*Translation.*)

EXHIBIT "BB" FOR PLAINTIFFS.

Received from Andres Andino 254 Railroad ties sent to me by Don Jacinto Lopez—Porto Rico, January 22, 1881.

PABLO UBARRI,
Pr. J. MATIENZO.

Received from the Captain of the lighter "Laura" 40 lugs of Ausubo sent by Don Jacinto Lopez from Dorado, who will pay the freight.

San Juan, P. R. April 3, 1882.

P. UBARRI,
Pr. J. MATIENZO.

215 (*Translation.*)

EXHIBIT "CC" FOR PLAINTIFFS.

Don Emiliano Diaz, Secretary of the City Council of Dorado:

I hereby certify; that in the record for compulsory process followed by the Mayor's office against the succession of Don Jacinto Lopez for the collection of municipal taxes of the years 1885 to 86 and 86 to 87, there are to be found the following proceedings:

"In the town of Dorado, Higuillar ward, on the third day of the month of December, 1886, I appeared at the home of Doña Concepción Laborde and said lady being present, I notified her in due form, by herself and in representation of her minor children the preceeding order notifying her at the same time for the fulfillment of the order or what is disposed in said order and in its consequence I proceeded to attach and did attach the lands hereafter expressed: To Doña Concepción Laborde y Rapp, for the payment of $940.18 and $66.37 for costs, I attached two hundred acres of land of fifth class in the Higuillar ward, bounded by the North with lands of the same succession, attached by the State for the payment of taxes; by the East by those of Enrique Lopez y Laborde; by the South with those of same Doña Concepción Laborde and by the West with those of St. Vicente, that is, the Central plantation; which land is segg*r*egated from the 2,760 acres which were adjudicated to her and are recorded in her name on book 64 of the archives No. 5 of Dorado, folio 86, property 101, recording 1 to Doña Maria Concepción Lopez y Laborde in order to pay $31.36 and $2.19 for costs, I attached ten acres of land of third class in the Higuillar ward, bounded by the North with lands of Doña Francisca Lopez y Laborde; by the East with same of Doña Maria Concepción Laborde, attached by the State for the payment of taxes; by the South with those of Don Jacinto Lopez y Laborde and by the East with those of same Doña Maria Concepción Lopez, which land is segg*r*egated from the 39 60/100 acres which belong to her, are recorded in her name on book 64, archive 3rd of Dorado, folio 96, property 103, recording 1st to Doña Francisca Luisa Lopez y Laborde for the payment of $31.17 which correspond to her of the debit claimed and $2.18 for costs, I attached 10 acres of land of 2nd class in the Higuillar ward, bounded by the North with land belonging to the same young lady which have been attached by the State; by the East with the Dorado road; by the West with land of the young lady, Consuelo Lopez y Laborde, and by the South with lands of the same young lady, Doña Luisa Lopez y Laborde, which land is segg*r*egated form the 39 86/100
216 acres which were adjudicated to her, are recorded in her name on book 64, archive of Dorado, property 102, recording 1st. To Doña Maria Consuelo Lopez y Laborde, for the payment of $30.58 which correspond to her on account of the debit claimed and $2.14 for costs, I attached ten acres of land of 2nd class in the Higuillar ward, bounded by the North with those of the same young lady, attached by the State; by the East with those of Francisca

Luisa Lopez y Laborde; by the South with those of the same young lady, Consuelo Lopez y Laborde, and by the West, with those of Don Manuel Lopez y Laborde, which land is segregated from the 38 84/100 acres which were adjudicated to her and are recorded in her name on book 64, archive 3 of Dorado, folio 101, property 104, recording 1st. To Don Manuel Lopez y Laborde, for the payment of $30.45 which were claimed from him as a debit, of these proceedings and $2.13 for costs, I attached 10 acres of 2nd class land, in the Higuillar ward, bounded by the North with lands of same Don Manuel, attached by the State; by the East with those of Doña Maria Consuelo Lopez y Laborde; by the South with those of same Don Manuel Lopez y Laborde, and by the West with those of Don Enrique Lopez y Laborde, which land segregated from the 38 28/100 acres which were adjudicated to him, are recorded in his name on book 64, archive 3 of Dorado, folio 106, property 105 recording 1st, to Don Enrique Lopez y Laborde for the payment of $31.42 which correspond to the debit claimed and $2.19 for costs, I attached 10 acres of land in the Higuillar ward, bounded by the North with lands of the same, attached by the State; by the East with lands of Don Manuel Lopez y Laborden by the South with those of same Don Enrique, and by the West with those of Doña Concepción Laborde y Rapp, attached before, which land is segregated from the 39 09/100 acres which correspond to him, it being recorded in his name on book 64, archive 3rd of Dorado, folio 101, property 106, recording 1st. The attachment being thus established I requested Doña Concepción Laborde y Rapp so that for herself and as curator representing her minor children, Don Jacinto, Don Manuel, Don Enrique, Doña Consuelo, Doña Maria Concepción and Doña Francisca Luisa Lopez y Laborde, to subscribe this document and she said that she would not sign. I also requested her to say whether the attached property had other incumbrances and she stated
217 that she did not know? At this stage I wrote the present which is signed by the substitute and witness, with me, all of which I certify. José Atiles, Leandro Antillo, Julio Mediavilla, setting forth that the property attached belongs to Doña Concepción Laborde and her minor children, adjudicated to her by inheritance of Don Jacinto Lopez, husband and father respectively, in accordance with the partition formalized of the property San Antonio, situated in the Higuillar ward of this district and composed of 4,000 acres of land more or less, of 1st. 2nd. 3rd. 4th. and 5th class of which the attached property were a portion, and which, reduced to the metric system, and assessed by experts, give the following result: Those attached to Doña Concepción Laborde are equivalent to 81 hectareas, 59 areas and 57 centiareas, assessed at $10.00 an acre. Those attached to Don Jacinto Lopez y Laborde, equivalent 10 hectareas, 19 areas and 93 centiareas, assessed at $20.00 an acre. Those attached to Doña Maria Concepción Lopez equivalent to 4 hectareas, 7 areas and 93 centiareas were assessed at $20. 00/100. Those attached to Doña Luisa Lopez with same equivalency as the previous, and assessed at $40.00 more. The ten of Doña Maria Consuelo Lopez with same equivalency, were assessed also at $40. 00/100 per acre.

The ten belonging to Don Manuel Lopez y Laborde with an equal equivalency and assessment as the previous one and the ten of Don Enrique Lopez, valued at $40. 00/100 per acre with equal equivalency also; having ordered on the 6th inst., the cautionary notices of said attachment, in behalf of the Municipality, and which order, copied, is as follows: Issue orders to the Registrar of Property, so that he may enter the cautionary notices of the attachments made by these proceedings, in behalf of the Municipality. It was ordered and signed by the Municipal Mayor, before me, which I hereby certify. Genaro Carparros—Julio Mediavilla. And the term for appeal from said order having expired, and so that at the notices of the attachment ordered may be effective, I issue the presents in duplicate, and you will return one of the copies, executed, for the files of this office—Dorado, December 8, 1887, The Mayor, Genaro Caparros—Gustavo Padron Garcia. Having made the cautionary notices of attachment referred to by the preceding order, in what it has reference to the 200 acres attached to Doña Concepción Laborde y Rapp, on book 64, of the Archive 3 of Dorado, folio 76 over, property 99, notice letter B; in what it has reference to the 25
218 acres attached to Don Jacinto Lopez y Laborde in the same book, folio 87 over, property 101, notice letter B; in what it has reference to the 10 acres attached to Doña Maria Concepción Lopez Laborde, in the same book, folio 97, property 103, notice letter B; in what it has reference to the 10 acres attached to Doña Maria Conselación Lopez Laborde, in the same book, folio 107, property 105, notice letter B; and in what it has reference to the 10 acres attached to Don Enrique Lopez Laborde, in the same book, folio 112, property 106, notice letter B;—San Juan, Porto Rico, January 20, 1888—The Registrar, José Ignacio Beyens—It is a copy, corresponding with the original, and on petition by an interested party I issue this at Dorado, October 5, 1901—Signed—Emiliano Diaz—O. K. Lopez—Signed. There is a seal which reads as follows; Island of Porto Rico. Municipality of Dorado.

Don Emiliano Diaz, Secretary of the City Council of Dorado, Certifies: that in the record for compulsory process followed by the Mayor's office against the succession of Don Jacinto Lopez for the collection of Municipal taxes, from 1886 to 87 and 1885 to 86, there is a document of auction sale which reads as follows:

"In the town of Dorado, on the 14th day of the month of January, 1888, at one o'clock p. m. The Mayor, assisted by myself, the Commissioner for compulsory process, called a public audience with a view to sell at auction the lands attached to the heirs of Don Jacinto Lopez as expressed by the document of attachment and edicts published in the ordinary form. In its consequence the session was opened and announced by ringing the bell by the auctioneer, Julian Martinez, who, in a loud voice offered the several tracts of land and in which session the neighbor, Don Cruz Alegrias appeared stating that he appeared as representative of his highest excellency, Sr. Don Pablo Ubarri and in his name he offered to take said lands as a whole, for the sums of the taxes due and costs originated in this record and it was three o'clock P. M. without anybody else appearing to

make a better offer than the one made by Mr. Alegrias, it was decided to accept his offer in behalf of the above mentioned Ubarri. With which the session came to an end, the attendants signing and I certify—Genaro Caparros—Cruz Alegrias—for Julian Martinez, Leandro Antillo—Julio Mediavilla.

It is a true copy corresponding with the original. And for
219 delivery to an interested party, I issue these presents at Dorado, October 5, 1901. (Signed) Emiliano Diaz—O. K. Lopez. (Seal) Island of Porto Rico. Municipality of Dorado.

Don Emiliano Diaz, Secretary of the City Council of the Municipality of Dorado;

Certifies: that in the record for compulsory process followed by the Mayor's office against the succession of Don Jacinto Lopez, for the collection of Municipal taxes for the years 1887-88, there is a document of auction sale property which reads as follows:

"In the town of Dorado, *in* the 19th day of the month of March, 1888, the Mayor, Don Jose Muñoz Barrios, attended by the subscribing Commissioner and auctioneer Julian Martinez called for audience in the Hall of this Municipal Building, with the view to sell at auction the lands attached in this record, to the heirs of Don Jacinto Lopez, for the payment of Municipal taxes. In its consequence, being one o'clock P. M. hour appointed for said sale, the audience was opened by the president and announced in a loud voice by the auctioneer. Immediately Don Cruz Alegrias appeared and said: that in representation of his most excellent Don Pablo Ubarri, made the proposition, to obtain in behalf of this gentleman, the lands attached, offering for them, the two thirds of the two thirds of their original assessment, namely the sum of $733.33 current currency.

The hour appointed having expired, and no other bidder being present to make a better offer than the one made by Mr. Alegrias, it was decided to grant to him the lands in behalf of the person he represents and the session came to an end which was signed by the parties present before me, and I certify—José Muñoz Barrios—Cruz Alegrias—Por Ruego de Julian Martinez, Mig. Fuertes—Julio Mediavilla—Note—The number of acres of land sold at auction was 235.

It is a true copy of the original. And on petition of an interested party, I issue the present, in Dorado, Oct. 5, 1901.—(signed) Emiliano Diaz—O. K. Lopez—There is a seal) Island of Porto Rico—Municipality of Dorado. Emiliano Diaz, Secretary of the Municipal Council of Dorado,

Certifies: that in the record for compulsory process followed by this Mayor's office against the Succession of Don Jacinto Lopez for the collection of the first quarterly of Municipal taxes of the year 1888 to 89, there is the following order:

220 "Dorado Feb. 7, 1889—Having seen the previous proceedings practiced by the Mayor's office in the attachment of cattle that was pasturing in the San Antonio plantation belonging to the Succession of Don Jacinto Lopez, on petition of this excellency Don Pablo Ubarri, according with the instrument of folio 23 of same proceedings. *Whereas* the owners of said cattle, presented them-

selves in due time with their respective registration tickets justifying their belonging and with tax receipts proving that they had paid the taxes imposed upon them. *Whereas* of all the proceedings, the only thing that can be exacted from the owners of said cattle, is the property acquired during marriage that was due to Doña Concepción Laborde, which is about $49.38 and of which, eight dollars have been already expended on expenses occasioned by carrying said cattle and its assessment, remain-g the balance of $41.38 as a deposit to attend to whatever expenses may be necessary further on. *Whereas* from the news acquired by this Mayor's office, the Succession mentioned, lacks absolutely of personal property, therefore the parting ruling taking into consideration that to the owners of the cattle who have justified their belongings with legal documents, any more than the property acquired during marriage and there being no cattle belonging to the Succession Lopez decrees, to notify with full copy to this Excellency Don Pablo Ubarri as creditor of the property debtor. It was ordered and signed by the Mayor, Don José Muñoz Barrios before me the Commissioner who certifies—José Muñoz—Saturnino Y. Vargas. It is a true copy corresponding with the original and on petition of interested party, I issue the present at Dorado, Oct. 5, 1901.—(Signed) Emiliano Diaz—O. K. Lopez.—There is a seal of the Municipality of Dorado.

The Secretary of the Municipality of Dorado:

Certifies: that in the record for compulsory process for the collection of Municipal taxes against the Succession of Don Jacinto Lopez for the year 1888 to 89, there is an instrument filed by the Excellency Don Pablo Ubarrio which reads as follows:

"Mr. Mayor, President of the City Council of Dorado: Don Pablo Ubarri Capetillo, a neighbor and proprietor of this Capital, before you appears and says: That some one having assured to him, that in the lands of the Succession of Don Jacinto Lopez, which was plantation San Antonio, there exists considerable number of
221 heads of cattle on which taxes should have been imposed, as the only thing capable of producing something, and as all of the taxes due by said property should be collected from said cattle, using of my right as creditor of said property, after having obtained a judicial attachment, over all of the remaining land in said property which sale is announced at public auction, to save and protect my legitimate rights, before you appears praying that considering my appearance, to order whatever may be proper and legal so that over the mentioned cattle be made the collection of taxes of any kind whatsoever which are due or may become due, the only thing over which collection should be attempted, going to the land only whenev-r the mentioned property is not enough to cover what is due. Justice that I demand in Porto Rico, January 25, 1889.—Pablo Ubarri.

There is a rubric—It is a true copy, corresponding with the original to which I have reference and I issue the present on petition of interested party, at Dorado, Oct. 19, 1901.—The Secretary—(Signed) Emiliano Diaz.—There is a seal of the Municipality of Dorado.

222 (*Translation.*)

EXHIBIT "DD" FOR PLAINTIFFS.

DORADO, *Aug.* 16, 1886.

Mrs. Concepción Laborde, San Antonio.

DEAR MADAM: A few days ago I wrote you a letter reminding you of the sum owed by the plantation as municipal taxes for last year, to which you replied that either we were deceiving you in a miserable manner, or else you did not understand these attachments. I do not fail to realize that those expressions are offensive to me, but having been uttered by you, who have always deserved my respect, and are entitled to more consideration than a man, I have overlooked the matter and do not entertain any spite.

I was not aware that you did not know that part of the municipal taxes for last year were unpaid, for the attachment of the 40 acres was for one half of the municipal tax of the year, you having said that the other half would be arranged between Don Ceferino, Don Eustaquio and yourselves, and as you may know Don Ceferino gave $200. and Don Eustaquio $50. as I advised you, there remaining a balance of $264.50.

Then the expediente or attachment proceedings were started for the insular taxes and 80 acres were attached, and although when the expediente was started the 3rd and 4th quarters were not included, their amounts were inserted by means of a certificate, so that of the insular taxes nothing remained unpaid. Therefore you will understand that if I trouble you it is because I cannot do anything else, and having so many engagements to attend to I cannot delay the collection. I hope you will order the amounts to be paid.

Yours truly, CRUZ ALEGRIAS.

223 (*Translation.*)

EXHIBIT "EE" FOR PLAINTIFFS.

FEBRUARY 25, 1886.

Mrs. Concepción Laborde, San Antonio.

DEAR MADAM AND FRIEND: In the letter Mr. San Juan writes to me he asks that the attachment be effected on the land known as "Los Oficiales," and not on the first class land (vega), of course I cannot fail to understand that if the attachment is effected on the latter the best part of the plantation will be taken away. I would very much like to accede to this, but if I effect the attachment on the "oficiales" land, I will assume a certain responsibility, for the Intendencia (Int. Rev. Office) would consider it that I have not complied with the "Regulation;" that I have not attached what is ordered, that is the best land and the better ploughed, and then I would be to blame without having accomplished any good for you, for the Intendencia would set aside the attachment effected by me and order another attachment on some other land.

I would like to do all that is in my power, and many times I have thought whether it would be possible to arrange it so as to avoid expenses and losses, and I have dropped the expediente; but this cannot be now, because I have received orders to report weekly on what is done, and I go on now without being able to stop it.

I feel sorry that I should be the person to decree these attachments and proceed with the expediente.

If there were some one who would purchase the "condensers" (evaporadores) or anything else, a great deal would be gained, and I think this would be a step forward in the testamentary proceedings, for the partition could not be made until the taxes are paid, and the registration cannot be effected without the tax receipts.

At present my opinion is that what requires attention is the taxes for all the property is responsible for them, and will realize that this will always be an obstacle in your way.

224 For the municipality there are attached 40 acres; if at the first and second auction sale there are no bidders, a third sale will be advertised, and the person who offers to pay the taxes will get the property; but suppose there will be some bidder, for one thousand pesos you will lose four or five thousand. I do not think the times are so hard that for the 40 or less acres of land some one should not turn up who would pay the insular and municipal taxes; the best thing would be work to sell one thing or the other, as the loss will not be so great.

I like to help you in all I can.

Yours truly, CRUZ ALEGRIAS.

225 (*Translation.*)

(EXHIBIT "FF" FOR PLAINTIFFS.)

Mrs. Concha.

DEAR MADAM: I send you a letter which was handed to me for you by the Doctor, and besides I send you the communication which I received from the administration denying the petition made by you asking that the sawmill be stricken off the tax list.

Through a mistake of mine I said to you that the tax on the mill was 50 pesos, and the insular tax is, as you said, 25.

Yours very truly, CRUZ ALEGRIAS.

226 (*Translation.*)

EXHIBIT "GG" FOR PLAINTIFFS.

Mrs. Concepción L. de Lopez.

DEAR MADAM AND FRIEND: Yesterday had to be submitted to the Council a petition presented wherein it was stated that while the small states were attached the big estate San Antonio was not pressed, and that unless the same was done with the latter a complaint would be filed against the Mayor's office at San Juan. I therefore request you

to pay at least $300. by the 20th; and so if you keep on paying that amount every month attaching may be avoided, and besides the taxes may be paid by sending 6 or 8 oxcarts to the road, for which, if you pay the drivers, you will be credited 3 pesos a day, and in a short time you will be free from taxes; and you cannot fail to realize the injuries and expenses which will be caused to you if proceedings should be started for the collection of the taxes.

Therefore let me know if you are willing to send the $300. and the ox-carts.

I also request you Madam, to settle my private account, because I have to pay out some accounts; even if you should not pay with money, for I would take something else; but don't think that I am trying to press you, if you cannot pay you will let me know and I will try to get the money from some other source to keep up my engagements.

You have no idea the fight I have to keep up in connection with that plantation, for everyone who comes to pay inquires whether that plantation has paid; so that I wish you would use all the means to pay up, for no matter how good my intentions may be toward you, I cannot do anything more in connection with the payment of the taxes.

Yours truly,
(Signed) CRUZ ALEGRIAS.

227 (*Translation.*)

EXHIBIT "HHH" FOR PLAINTIFFS.

In the town of Vega Alta, Espinosa ward, at 8 o'clock in the morning of the 13th day of April, 1887, the Secretary and the Alguacil (undersigned) assisted by the ward commissioner Don Ceferino Mena, appeared at the place called Monte Rey and we proceeded to levy a preventive attachment on a number of acres of land of 468 acres or according to the metric system 183 hectareas 94 areas, 22 centiareas, which attached lands are bounded according to statement of the Mayor (ward Mayor) on the land belonging to the owners of San Antonio, Santa Elena and Carmen plantation, and a tract of land belonging to Don Vicente Esterliche and Don Leonardo Ygaravidez. It is equally set forth that the land levied, and that are known as Monte Rey, are made up of forest land.

There is present in this act Don Cruz Alegria. The porter asked him if he would be trustee (depository) of the said attached land, and he replied that he would be trustee with pleasure, offering to discharge his duty in accordance with the law, and that the proper order be issued that he may watch the said land as needed, thereupon the act was declared closed which lasted eight hours, and with which gave authority to the depository appointed by the porter, and other persons present, and to all of which I the Secretary, certify. Signed. —Cruz Alegria.

At the request of the ward commissioner of the Espinosa ward,

Don Ceferino Mena.—Signed—Jose A. Rivero.—The Alguacil—Juan Rosado—The Secretary—Nicanor Wichy.

The present copy agrees with the original to which I refer.

And the same is issued to be delivered to Doña Concepción Laborde, widow of Jacinto Lopez, at Vega Alta, the 13th of April, 1887.

Visse—The Acting Judge, Vidal Vega.—The Alguacil, Juan Rosado.—the Secretary, Nicanor Wichy.—(signed)

228 ROBERT H. TODD, called as a witness in behalf of the Plaintiffs, testified, as follows:

"That he is 44 years of age, a lawyer, and resided at San Juan, "In the years 1885, 1886 and 1887 he lived in San Juan and was an "employee in the Diputación Provincial, between the years 1879 and "1887. The 'Diputacion', as it was called in Spanish, was the "last resort, sort of supervising authority over all the municipalities and had control of their budgets, of taxation and everything pertaining to the municipalities. It saw to it that the municipalities themselves should collect taxes; not only municipal, "but provincial, Insular taxes, and it was also a sort of administrative appeal body for any tax-payer who felt aggrieved on account "of high taxation, etc. It was composed of 16 members, elected "at large from all the Island. They would meet twice a year in "ordinary session. It had a presiding officer called a President "and a Vice-President and Secretary who had no vote. During all "the time between sessions of that body it had by law a standing "committee called a permanent committee, appointed by the Governor within its own body, consisting of three members living in San "Juan. The presiding officer of that committee was the Vice-President of the Diputación, and the other two members were appointed "by the Governor. This committee would transact all business coming before it in the absence of the Diputación itself. This committee exercised all of the powers of the Diputación subject to the "approval of the latter. During the eight years that I was connected with that body as a clerk Mr. Pablo Ubarri Capetillo was "the Vice President of the Diputación, and as such, President of this "standing committee.

"Financially Mr. Pablo Ubarri Capetillo was considered the richest "man in Porto Rico, and politically he was the man with the most "power. He was considered even with more power than Captain-"Generals, so much so that he was supposed to influence the Home "Government in the appointment of Captain-Generals, and he was "also the President of the Conservative Party, meaning the
229 "Spanish Party, here, who had entire control of the politics "of the Island during the years 1879-1887."

No further testimony was given by this witness.

RAMON FALCON, being called as a witness for Plaintiffs, testified, as follows:

"That he was a lawyer by profession and 44 years of age, residing "in San Juan, in which place he was born. He has been practicing

"law there five years. He knew Pablo Ubarri Capetillo in his life "time. Pablo Ubarri had more influence in Porto Rico than even "Mr. Roosevelt has now in the United States. He was a man of "such influence that when he desired to remove a Governor, or "have a Governor removed,, he did so, and it was easy for him to "exercise that power with regard to the removal of a judge or mayor. "He was the leader of a political party which had the greatest "amount of influence in Porto Rico. Persons who belonged to "that party were so afraid of him that they did not dare to oppose "his influence, to disagree with him, although he privately was a "very good man; personally he was a good man. He was a man "who would not hesitate or stop in the exercise of his power, be-"cause he was sure of whatever he desired or wanted to do. He "was a man of good position, with a large capital—perhaps the "wealthiest man in the community. He was engaged in various "kinds of business. His leading counsel, or lawyer, was Francisco "de P. Acuña. As far back as 1884 or 1885 his Procurador, or "judicial Agent, was Tomas Caballero. Julian Matienzo was his "nephew. Pablo Ubarri was born at Vizcaya, a province in Spain, "and came to Porto Rico very young. He was a hard-working man "and built up a fortune. At the same time he was a strong character "and he managed to dominate until he was the owner of the situa-"tion. At that time money was above everything, and he, who as "a matter of fact was a hard-working man, increased his fortune
"through his labor. By means of his influence he paid as
230 "little as possible to the Treasury. He was a remarkable
"man, of great force of character. He kept elections in line "in Porto Rico with the Home Government, and they went as he "wanted them. In exchange for the influence which the Home "Government gave him, he gave the Government the deputies or "representatives which the Government wanted. He was the Chief "of the Volunteer Bat-al/ion, which was an Army of over 1,000 men "in San Juan, and in the rest of the towns of the Island he had "control of that force, which was an armed force, and it was said "that the existence of that battal/ion helped to secure national con-"trol of Spain in this latitude."

No further testimony was given by this witness.

Thereupon there was offered in evidence by Plaintiffs and read to the jury Exhibits "H" and "JJ", as follows:

231 (*Translation.*)

EXHIBIT "H" FOR PLAINTIFFS.

Copy of the Complaint in the Case of Pablo Ubarri versus the Succession Lopez.

To the Hon. Judge of First Instance.

Tomas Caballero, Solicitor (Procurador) of Pablo Ubarri; with power duly accompanied, before you as it may better proceed in

law, appears and says: That my client sustained during several years, business relations with Jacinto Lopez for the supply of wood, dedicated to the enterprise of the tramway from this Capital to Rio Piedras receiving in payment thereof, cattle and other values, giving rise to a current account in which, payments and part-payments were correspondingly made. On the 23rd of February 1881, as Lopez did not to continue to supply and having the business come to an end, the current account was formalized up to that date, my client appearing then a creditor for the sum of seventeen thousand and odd dollars, the amount being composed of the interest on the items due, determined in the several items, at the rate of 1% per month. The account having been formalized and subscribed by the debtor, my client took the necessary steps while Jacinto Lopez was alive, to collect the amount and after his death has waited until the settlement of the testamentary proceedings, giving an opportunity to the heirs, to pay the debt of the deceased. This has not given him any result, because the testamentary proceedings having ended and the division of the property having been approved by the Court, payment is not made nor any proposition tending to pay such debt, and on the contrary, an impugnation to the debt has been announced, although it was recognized with some increase on account of the interests due, afterwards in the same testamentary proceedings. For this reason he is obliged to file the corresponding complaint, and in whose name I do, basing it on the following points of fact. 1st. Pablo Ubarri and Jacinto Lopez had during a number of years business relations regarding the supply of wood and other articles, with charges for their value, being made in cash and cattle which business in a current account gave occasion that this account be formalized on the 23rd of February 1881 beginning with a credit in favor of Ubarri, on the 28th of October of 1878 of $15,362.97 and ending with another credit in favor of the same of $17,144.38 signing Lopez his
232 conformity to it. 2nd. In this account items of interest at 1% per month, of the amounts expressed therein, the last total amount for interest being of $660.95 corresponding to the amount due in the mentioned date of 23rd February 1881, which came up to $16,501.37. 3rd. From that date until November 7th, 1884, in which Jacinto Lopez died, this account has not been augmented nor diminished by part-payment of principal or interests. 4th. Lopez having died without a will, the heirs and legal representatives formalized the corresponding proceeding and in it, taken into consideration the amount due to Ubarri, and the interests that were afterwards due, and his balance with the deceased Lopez, Ubarri was recognized as creditor for the amount of $24,000.00. 5th. The testamentary proceedings having ended with *with* the approval of the partition by the Court Pablo Ubarri has taken steps for the collection of his credit, having obtained only as part-payment, the delivery of a machine to saw wood, which was in bad condition and for this reason the value has not been fixed for part-payment on the account about which the plaintiff is ready to submit to valuation given by experts. About these facts, we must apply the following points of law: First—The debtor of the liquidated sum, who has

acknowledged the same in a current accou-t should pay immediately if there are not terms specified or any other conditions for payment. Second:—It is a licit contract and that may be exacted in its consequence, the payment of interest in a current account, at the rate fixed in the same and subscribed in conformity by the debtor, and it is only to be exacted, the interest from the time of the liquidation of the account, until its payment. Third:—The heirs, in the same manner that they acquire the property of the deceased, they also are obliged to pay the debts that were pending at his death. 4th:—The malicious litigante, and it is he who gives occasion to a litigation, for the non-payment of an obligation, should be sentenced to pay costs. As a consequence making use of this personal action and reserving the right to amend or to add to this complaint, it may please your Honor, that considering my appearance, with power, acknowledged account, and copies accompanied herewith, be kind enough to consider as established, this declaration of action of greater import, against the Succession of Jacinto Lopez composed of Trinidad Lopez, married Eduardo Trujillo, and Antonia Lopez, married to Jose Maria San Juan, both of them daughters of the first marriage with Trinidad Garcia, and also composed of the children of his second marriage, named Francisca, Luisa, Jacinto
233 Lorenzo, Maria Concepción, Maria Consolación, Enrique and Manuel Demetrio, all under age, all of whom are represented by their mother Concepción Laborde, because of the death of Lopez, Title, V of the Law of Civil marriage being in force, and ordering that together with the summons, a copy be given to Trinidad, and Antonia Lopez in their own right, and to Concepción Laborde as representing her above mentioned children, so that in the unextended term of nine days, they may appear to answer in due form, and in time, give judgment in favor of the complainant, ordering the mentioned Succession to pay $17,144.36, acknowledged on the 23rd of February of 1881, and interest at the rate of 1% per month of $16,501.37 from that last date until payment be made and to pay costs. I demand justice, in the necessary form. *Besides* Persons under age being interested in this action, we have omitted a conciliation proceedings in accordance with the Exception 4 of Art. 459 of the Law of Civil Procedure. For this reason, may it please your honor to consider as made, this statement for the end of justice. 2nd.—*Besides* Of the defendant succession, Trinidad Lopez resides in Toa Baja, and Concepción Laborde in Dorado, for which reason I demand from your Honor, that summons may issue by despatches to the Municipal Judges of the mentioned towns, with enclosure of copies, informing the former that the summons in the first case should be made with the attendance of her husband, in the case of Trinidad Lopez, and, if not found in accordance with the law. Justice as before. Porto Rico, February 21, 1887. 3rd:—*Besides* In accordance with what I have stated in this complaint, my client received as part payment of his credit, a machine to saw wood about the price of which the parties agreed. The price of it appraised by experts, the plaintiff is willing that it may be deducted from the amount claimed, and for this reason, I beg of your Honor to consider

as an addition the complaint in the sense that it will be taken as legitimate part-payment, the value of the mentioned machine, the appraisement of which shall in due time in the course of this action, be made. Justice as before. 4th:—*Besides* I need for the purposes the power presented, for which reason I beg of your Honor, to order that it may be returned to me, leaving a certified copy of same. Justice and date as before.

Attorney, FRANCISCO DE P. ACUÑA.
TOMAS CABALLERO.

234 (*Translation.*)

EXHIBIT "JJ" FOR PLAINTIFFS.

D. Manuel Saurez Valdez, Judge of the First Instance of the Cathedral district of this city and district, to the Municipal Judge of Dorado:

I make it known: That in the complaint that in this Court has been entered by Don Tomas Cabellero, attorney in fact (Procurador) of Pablo Ubarri, against the Succession of Jacinto Lopez for the collection of $17,144.38 and interest, the said attorney in fact has filed a petition whose prayer, as well as the order thereon entered reads as follows:—Prayer—I pray the Court to order a preventive attachment on the estate of the Succession of Don Jacinto Lopez for the amount involved in the document annexed to the complaint and interest thereon at the request and responsibility of my client, whose responsibility is well known, the said attachment to be effected, for the present only, on the lands known as Monte Rey and Los Oficiales as as well as on all other belongings to the Succession where there may exist forest land, issuing orders to the municipal judge of Dorado and that of Vega Alta to the end that through the Secretary and Marshal/ the said attachment be effected and notify the same to the Mayor so that special vigilance be exercised by the mounted guard (guardia civil) to the end that no wood or lumber be taken from the said forest land, and if any other fruit be taken to arrest the person so doing. Order Porto Rico May 11, 1887, No. 1. Whereas: Pablo Ubarri, represented by the attorney in fact Caballero, has entered a complaint (declaratory action for greater import) against the succession of Jacinto Lopez, for the collection of $17,144.38, which complaint has been admitted by order of the Court entered the 28th Feb. last; 2—Whereas: the said complaint is accompanied by a document or current account with the conformity of the debtor set thereon; 3. Whereas: in the foregoing petition the attorney in fact of Pablo Ubarri asks as preventive attachment on the said estate of the debtor at the request and risk of complainant, basing the said action on the fact that Concepción Laborde, widow of Jacinto Lopez, and who in such capacity represents the greater part of the heirs, intends to utilize in a large scale the forest land which makes up a great portion of the land belonging to the estate, which would depreciate the

value of the same; whereas the provisions of No. 1 and 2 of
235 Section 1398 and second subdivision of Section 1399, and No. 1 of Section 1410 of the Law of Civil Procedure are applicable to the case; whereas the provisions in Section 1395, 1397, 1399 (second subdivision) and section 1401, 1402, 1403, 1405, 1409 and 1410 of the said Law of Civil Procedure govern the case; now therefore the Court decrees the preventive attachment applied for at the request and risk of Pablo Ubarri on the lands designated as Monte Rey and Los Oficiales as well as on all other belonging to the Succession wherein there may be forest land in such amount as to cover the sum sued for, interests and costs, notifying the complainant that if the term of 20 days are allowed to pass without asking for the ratification of the said attachment, the said attachment shall be null, and the said attachment shall have no effect if the debtor should pay the said amount depositing the same or sufficient bond to guarantee the said sum; the Court to issue the necessary orders to the Municipal Judge of Vega Alta and Dorado, the papers on these proceedings to be filed at the record of the Court. And that the said attachment be effected I order this present order. Porto Rico May 12, 1887.—Manuel Saurez Valdez (escribano), Esteban Calderon—A true copy. Ulises—Surname—unintelligible.

236 Plaintiffs further offered a certified copy of the judgment of the Court in the suit of Pablo Ubarri against the Sucesión or estate of Jacinto Laborde y Martinez, which said judgment provided or ordered the sale of the property of the said estate; and also the judicial proceedings showing the public sale of said property and its purchase by Pablo Ubarri Capetillo. Exhibit "K-K."

Plaintiffs further offered and read to the jury Exhibit "L-L," setting forth the judicial proceedings connected with the sale of the said property and the purchase thereof by the said Pablo Ubarri Capetillo.

Thereupon Plaintiffs offered in evidence and read to the jury Exhibit "M-M" (These three exhibits appear on pages 94 and following).

This was all of the evidence offered by Plaintiffs, who then rested.

Thereupon, Defendant, Buenaventura Ubarri, by his counsel, moved the Court to instruct the jury for a peremptory verdict for the said Defendant, or to enter an involuntary non-suit or dismissal of the case on the grounds, as follows:

(*a*) That a sufficient case has not been made out for the Plaintiffs to go to the jury under all the evidence.

(*b*) The Plaintiffs' case shows that prescription has run.

(*c*) Because this Defendant is only one of the heirs and there is nothing in the evidence showing how a judgment should be apportioned or that the Defendant is liable *in solido*.

(*d*) Because the cause of action set forth, and which the evidence tends to prove, does not survive as against the heirs or against this one Defendant.

(*e*) Because of the lack of indispensable parties, to wit: Pablo Ubarri é Yramategui, Modesto Ubarri é Yramategui, Rufino Ubarri

é Yramategui and José Maria é Yramategui, who, together with Defendant, constitute the Sucesión of the estate of Pablo Ubarri y Capetillo, and:

(*f*) Because the Plaintiffs in establishing their case make a collateral attack upon a judgment of a proper and competent court.

This motion the Court over-ruled, and then and there the Counsel for Defendant duly excepted.

237 *Translation.*

EXHIBIT "KK" FOR PLAINTIFFS.

Judgement of the Superior Court.

Lawyer Eduardo Rodeyro y Garca, clerk of the chamber of the Territorial Court (Audiencia) of Porto Rico.

I hereby certify that on roll No. 54 corresponding to the declaratory action for greater import of the extinguished Cathedral Court followed by Don Pablo Ubarri against the Succession Lopez, for the collection of money, there is a certificate containing the following Judgement. No. 38. In the city of San Juan the Baptist of Porto Rico on the 23rd., day of August of 1886; in the action for greater import filed in the Court of First Instance by Pablo y Capetillo of this vicinity, a proprietor, represented by Solicitor (Procurador) Tomás Cabellero y Osorio, directed by Attorney Francisco de P. Acuña, against the Succession of Jacinto Lopez represented by Concercion Laborde y Rapp of the vicinity of Dorado, represented by Solicitor (Procurador) José Palacios y Echevarria and directed by Attorney Rafael Lopez Landrón for the collection of $17,144.38 which record come to this Court on appeal interposed by Concepcion Laborde y Rapp, of the Judgement of March 19, of 1888 giving Judgement for the Plaintiff in the complaint filed in behalf of Pablo Ubarri, sentencing the Succession of Jacinto Lopez to pay within the period of five days to the above mentioned Ubarri the sum of $17,144.38 acknowledged on February 23rd., *pf* 1881 by Lopez himself; the interest at 1% per month of $16,509.37 from that last date until payment be made, accepting as legitimate part-payment the value of a machine to saw wood appraised [illegible] experts, sentencing the minor children to pa*t* costs, with the excep[illegible] of those incurred by reason of the objection to the document of folio 243 which shall be understood in the ordinary form, also those incurred by reason of the older heirs, Trinidad and Antonia Lopez Garcia to whom there is no imposition of costs; the documents of the mentioned folio 243 and that folio 104 presented respectively by Solicitor (Procurador) Palacios y Caballero; and having seen article 280 with their relation to Articles 281 & 283 it is hereby imposed to clerk (escribano) Esteban Calderon the fine of sisty-five pesetas (20 cts) which he shall pay in the corresponding paper; Being the Justice (who prepares the case for opinion) (ponente) accidental the Hon. Francisco Ramos. Accepting the *Whereas* (resultados) of the appealed Judgement.—*Whereas* The record having come on appeal to this Superior

Court, appearing the Solicitors (Procuradores) of the parties, the corresponding brief was formulated by the lawyer (relator) and going through the proceeding of instruction the record went to the Justice (Ponente) in charge of the case to prepare an opinion they were returned and the Relator read the proceedings with citation and appointment of date for the hearing, which took place on the 17th., inst. *Whereas* in the proceedings are not to be observed any defect or omission. Accepting the *Therefores* (Considerandos) of the *reffered* to Judgement. Having seen the legal precepts cited by the Judge, We hereby decree. That we ought to affirm and do affirm the judgement appealed with costs of this second instance to the appellant. Thus by this our Judgement we pronounce order and
238 sign.—Juan F. Ramos, Francisco Pampillon, Antonio M. Mojarrieta, José Ma. Figueras, Publication. This former Judgement was read and published by the Hon. President of the Court, accidental Hon. Juan Francisco Ramos, at the hearing of to-day, August 24th., 1888. Eduardo Rodeyro. It is a true copy of the original Judgement existing in the book of the Court marked with No. 38 of order which I quote. Porto Rico, August 24th., 1888., Eduardo Rodeyro. Examined Ramos. Said Judgement was notified to the Solicitors (Procuradores) of the parties, that of Concepcion Laborde presented appeal for annulment of Judgement based on breach of form, to which the following ruling was passed. Porto Rico, September 19, 1888. The motion for appeal not having been accompanied by a document proving that a deposit has been made as provided by Art. 1696 of the Law of Civil Proceedure, without bringing any document proving that the party has been declared a poor person or ordered to be defended as such, the appellant, as it said by him in his first supplementary prayer (Otrosi) of his motion in which it is proposed to give bond under oath, all *fo* which being foreign and therefore contrary to the legal precepts in force. Having seen Art. 1749, 1766 and 1767 of the mentioned law. The admittance of the motion presented by Solicitor (Procurador José Palacios in behalf of Concercion Laborder is overruled, and the return of same, is ordered, leaving at his cost a certified copy in this record. It was decided and signed by the gentlemen of the Court. I hereby certify Juan F. Ramos, Francisco Pampillon, Antonio Mojarrieta, Josze Ma. Figueras, José R. Becerra The Relator Attornet Juan González Font. The clerk of the Chamber Eduardo Rodeyro. Having notified this order to the respectives Solicitors (Procuradores) the representation of Concepcion Laborde presented an instrument, establishing a complaint to the same chamber against the previous decree and in its consequence the following decree was passed. Porto Rico November 7, 1888. Basing it in the same principles of the instrument and Therefore that it is clear and conclusive the provision of Art. 1696 of the law of Civil procedure that the person desiring to interpose an appeal for annulment of Judgment for breach of form, if not declared a poor person, shall deposit 2,500 pesetas (29 cts. apiece) in the establishment provided for the purpose, without which requisite the instrument for appeal should not be admitted. Therefore.—that the allegations of the party do not

mean anything to the contrary, that she has been defending herself as a person during the course of the action, because of it, the declaration of poverty is not indispensable; it is enough to establish it in due form, in accordance with Art. 27 of said law but that benefit, does not reach the appeal for annulment of judgement because for such a case it is necessary that it be a judgement which executorily declares the appellant a poor person. Therefore Concection Lopez Laborde not being in said condition and that the bond offered *if* therefore not according to Law and contrary to the legal provisions cited. Overruled with costs of the complaint and the *cua*mendment of the decree of September 19th, past. It was decided and signed by the gentlemen of the Court. I hereby certify Francisco Panpillon, Antonio Mojarrieta, José R. Becerra, José M. Figueras, The Relator Attorney Juan Ganzález Font. The clerk of Chamber Eduardo
239 Rodeyro. Notified the ruling to the respective representations of the parties, that *od* Concepcion Laborde presented instrument giving notice of appeal for annulment of judgement for infraction of the Law which the Court gave the following decree. Porto Rico November 29, 1888. Whereas that having been followed an action in the extinguished Cathedral Court by Pablo Ubarri against the Succession of Jacinto Lopez Martinez and Concepcion Laborde representative of her minor children for the collection of money, judgement was passed by this Supreme Court with date August 23, last part, affirming the one passed by the lower Court sustaining the complaint and sentencing the defendants to pay the amount with costs. Whereas in the legal period there appeared the representation of Concepcion Laborde filing an appeal for annulment of Judgement for breach of form, based in what is contained in his instrument, and such appeal was denied by ruling which reads as follows: the instrument not havin*f* been accompanied by a docu*ment* proving the deposit provided be Art. 1696 of the law of Civil Procedure and not bringing any document proving that she has been declared a poor person and ordered her defense as such the appellant as he himself states in his first supplementary prayer (Otrosi) of his instrument proposing instead of the deposit provided by law, a bond under oath, foreign and therefore contrary to the provisions of law in force. Having seen Art. 1749 and 1766 o- the mentioned law. The instrument presented by Solicitor Palacios in behalf of Concepcion Laborde is over-ruled, and the return of the same instrument is hereby ordered, leaving a certified copy of his cost in this record. Whereas from thet ruling a complaint to the same chamber was established by the same representation by instrument of September 25, which was also over-ruled by ruling of November 7, which reads as follows: For the same reasons of the ruling for the complaint to the same chamber and considering that it is clear and conclusive, the provision of Art. 1696 of the law of Civil Procedure that whomsoever desires to establish the appeal of Judgment for breach of form, if he is not declared a poor person, shall deposit 2,500 pesetas in the establishment provided for such purpose without which requisite the instrument for appeal should not be admitted. Therefore. That the allegations of the party that

she has been defending herself during the course of the action as a poor person does not mean anything to the contrary, because for it, the declaration of the poverty is not indispensable it being enough to establish it in due form, in accordance with Art. 27 of said law, but that benefit does not reach the appeal for annulment of Judgement, beause for such a case it is necessary that it be a judgement that executorily declares the appellant to be a poor person. Therefore, Concepcion Laborde not being in said conditions and that the bond offered not in accordance with the law and contrary to the legal provisions cited, Over-ruled with costs the complaint and the am*m*endment, to the decree of September 19 past. Whereas. That with the date of the 12 inst. a new instrument was presented by the representation of Concepcion Laborde for the annulment of Judgement for infraction of the 7th inst. to which the character of a definite ruling was given and therefore demanded a certified copy of said ruling; and on the following day November 13th., the representation of the Plaintiff demanded that the record be returned to the Court with a certified copy of the Judgement passed for
240 its execution without prejudice to the assessment of costs that may be afterwards made. To the instrument of Solicitor Palacios of the 12th., Inst., Therefore Although the appeal for annulment of judgement can be taken from ruling resolving the complaints established by Art. 401, such as the one we are dealing with, this shall be understood, when these records have attained the character of a final judgement, in accordance with the clear and conclusive provision of Art. 403 Therefore That the ruling of the 7th., inst., against which appeal is taken, has only the character of a ruling according to the definition given by Art. 368 without being considered as a final judgement, because it lacks the necessary conditions according to art. 1688 of the Law of Civil Procedure and because it is not provided that said ruling be passed in the form of a judgement, that being in itself sufficient to consider it as a ruling in accordance with the Art. mentioned. Therefore, For the reasons given, the appeal announced is not provided for by law. Over-ruled with costs and certified copy of this ruling is ordered to be delivered to the time of the notification as provided by Art. 1701. To the instrument of the Solicitor Caballero. Return the records to the Court with a certified copy of the Judgement for its execution. It was declared and decided and signed by the gentlemen of the Court. I hereby certify Juan F. Ramos, Francisco Pampillon, Antonio Mojarrieta, José R. Becerra. The relator Juan Gonzalez Font. The cl*a*erk of the Chamber E*f*uardo Rodeyro and for the purpose of forwarding the same enclosure of record comp*a*sed of two pieces with 332 folios to the Court of the Capitol and assessing the costs at some future date, I issue *y*he present in Porto Rico, November 22, 1888. Eduardo Rodeyro. Clerkship of Chambers. Roll No. 54, decided by this Audienci- the -ppeal taken by Concepcion Laborde representing her minor children had by Jacinto Lopez of the judgement passed by that Court in the declaratory for greater import followed by Palo Ubarri for the collection of money, I forward to your honor a certified copy of the Superior judgement and necessary insertions return-

ing the records composed of two pieces with 332 folios and at a future date, the assessment shall be made of these costs. May God save your Honor for many years.

Porto Rico, November 22, 1888.

EDUARDO RODEYRO.

To the Hon. Judge of First Instance of this Capital.

O. K.

M. S. GEIGEL.

241 (*Translation.*)

EXHIBIT "LL" FOR PLAINTIFFS.

Auction, Copy of an Edict.

Court of First Instance of this Capital.

Clerkship (Escribania) of Don Tomas Calderon.

By virtue of a ruling passed by this Court in the declaratory action for greater import, followed by the Solicitor (Procurador) Don Tomas Caballero in representation of Don Pablo Ubarri, against the Succession of Don Jacinto Lopez y Martinez, about collection of a sum of money, the following lands and constructions attached to said action, belonging to the defendants shall be sold at auction in the period of twenty days.—These forming the plantation San Antonio in the town of Dorado and those known by the names of "Monte Rey and the "Oficiales" situated in the same jurisdiction and in Vega Alta, deducting that which have been attached for the payment of costs, of the attached and sold at auction for the payment of costs, with the exception of 40 acres, of first class, and those which were adjudicated to Doña Trinidad Lopez y Trujillo, which lands were the subject of diverse adjudications in the testamentary proceedings of Don Jacinto Lopez y Martinez and which have been appraised; those of the first class, at $25.00 per acre, those of second class, at $15.00, fourth class, at $10.00, and those of fifth class, at $2.00 per acre; the lands of "Monte Rey" at $12.00 per acre and the hills known as "Oficiales" at $5.00 per acre. Buildings: The house of the extinguished plantation San Antonio situated in the Higuillar ward, jurisdiction of Dorado, which is one story, of wood, roofed with zinc, having 10 meters and 48 centimeters front, by 39 meters and 2 centimeters in length, with its kitchen roofed with bricks, with 6 meters 72 centimeters front and 4 meters by 44 centimeters in length, which have been appraised at $500. A neighboring ranche roofed of zinc, without fence, and a brick building which was used for offices or factory of said plantation with 33 meters, 60 centimeters, by 42 in length on the North and 17 on the South, in very bad condition, almost destroyed, the previous ranche will measure about 14 meters in length by 5 meters wide, being appraised these two buildings in $500. And with a cistern within the last mentioned building, appraised in $100.

Which sale shall take place on the 16th day of February
242 next, at 10 o'clock A. M. in the Court room of this Court, with notice that the titles of these properties are attached in the records and may be examined by those wishing to take part in the auction, with them they have to conform and they shall not have the right to claim any other, and sums which do not cover two thirds of the appraisement shall not be accepted, and that in order to take part in the auction, a deposit of 10% of the amount which serves as just valuation, shall be deposited in Court, this amount is calculated to be $1,657.00.

Porto Rico, Monday 21, 1889.

Before me the clerk—Calderon.) Examined—(Vo. Bo.) Nicolas Lillo.

Document of Auction Sale.

In the city of San Juan the Baptist of Porto Rico, being the 16th day of February, 1889, and at the hour appointed for the celebration of the sale of the property attached in this record. His Honor decided that by the Marshall announce it as it was done, commencing the proceedings by reading the list of properties which appears to have been attached in due time and of the conditions under which this sale should take place, which I the recording Clerk, read. The auction was opened, and the plaintiff Don Pablo Ubarri, was the only person present as bidder and he states that of the several tracts of land attached, the subject of this auction, 17½ acres are of first class, 30 88/100 of second class deducting those which have been lately sold to him by Doña Antonio Lopez San Juan. 229 acres of fourth class and 712 acres of fifth class.

Besides 468 acres 50/100 known as Monte Rey and 200 called official (de los oficiales) classified all of those as of third class.

That he offers two thirds of the appraisement at the respective just valuation, applying this price, to the payment of his credits, interest and costs of which he has to reimburse himself.

This bid having been announced three times, without anybody making a better proposition, the Honorable Judge closed the auction sale, deciding the adjudication of the properties related, to the above mentioned gentleman, Don Pablo Ubarri, in the referred two thirds of the apprais-ment, ordering its publication to the Marshall as it was done, so that the result of the auction may become known, signing this document as proff of the conformity and acceptance, the above mentioned Ubarri with the Clerk and Marshall of the Court as I certify.—Nicolas Lillo Rodas.—Pablo Ubarri—Ciriaco
243 Vargas—Esteban Calderon—Porto Rico, February 16, 1889. —Whereas—the property related in the previous edicts were announced at public auction, the only person present at the time of sale was the plaintiff, Don Pablo Ubarri, offering for said estate two thirds of their apprais-ment that was duly announced and no one has made a better bid.— Whereas—in said auction sale the legal prescriptions have been fulfilled—Therefore, Being as it is lawful the bid made by Don Pablo Ubarri, it should be aproved— Having

seen articles 1497, 1499, 1508 and 1509 of the Law of Civil Procedure, the Hon. Nicolas Lillo y Rodas, Judge of First Instance of this Capital, before me, his honor said; that he ought to approve and does aprove the auction practised in which the bid was made by Don Pablo Ubarri, two thirds of the value given by apprais-ment to the property sold at auction ordering in its consequence that the recording clerk make the corresponding liquidation of charges.

Thus it is ruled, ordered, and signed the referred to Judge as I certify.—Nicolas Lillo Rodas—Before me, Esteban Calderon.

244 (*Translation.*)

EXHIBIT "MM" FOR PLAINTIFFS.

Criminal.

Attorney Eduardo Rodeyro y Garcia, Clerk of Chamber of the Territorial Audience of Porto Rico. I certify: That on roll number 1632 of the criminal action followed before the Court of First Instance of Cathedral, in the Capital to-day, against Doña Concepción Laborde y Rapp, for larceny of certain wood in the property of the Succession of Don Jacinto Lopez, there are to be found the sentences of first and second instance and proceedings, which are literally copied:

Sentence: In the city of San Juan Baptist of Porto Rico, being the 30th day of April, 1888, Don Enrique Diaz de Guijarro Judge of 1st instance of the Cathedral and its judicial district said that having seen this criminal cause followed between parties: on one side the district Attorney; and on the other judicial agent (Procurador) José Palacios representing Doña Concepción Laborde y Rapp, who was born at Bayamon and of the vicinity of Dorado fifty years of age, a widow, proprietress, without penal precedent and at liberty, for embezzlement of wood. First, whereas, in the action followed by Mr. Pablo Ubarri against this succession of Don Jacinto Lopez for the collection of money he petitioned and obtained in the month of March an order of preventive attachment against the property of the referred succession; which attachment was carried into effect: among other lands, in the mountain, situated in the Higuillar ward of of the jurisdiction of Dorado, and that having been opposed by Doña Concepción Laborde as guardian and Curator of her minor children had with Don Jacinto Lopez, to said attachment, it was ratified with all formality for the purpose that it was established: Facts proved by documents on pages 49 to 103. Second. Whereas, in the month of December last, seven tress of capa prieto were cut down in said attached mountains which were cut down by Martin Ylanza, Eluterio Rivera, Pedro Jose Rivera and Jose Baez; which yielded 47 boards occupied in the hands of Doña Concepción Laborde which lady had given orders for them to be cut down and they could well be worth seventeen pesetas fifty cents, and the forty seven boards having been assessed in 82 pesetas 70 cents: Facts proved by the declaration of Martin Ylanza, Eleuterio Rivera, Pedro Jose Rivera

and Jose Baez, by confession of Doña Concepción Laborde and by expert testimony on pages 5 over, six over, nine, ten over, 13 14 over, 23, 24, 24 over 26, 27, 36 and 105 over. Third, Whereas, having obtained the testimony of Doña Concepción Laborde, she stated that she ordered the cutting down of said wood, in order to attend to the necessity of her family and for the payment of taxes, because the attachment made by Don Pablo Ubarri in the lands already mentioned, had been raised, which fact does not appear justified. Pages 36 and 49 to 103. Fourth—Whereas, according to the certificate issued by the Clerk in another action followed against Doña Concepción Laborde for larceny, which has been examined also in this case to provide better, on the 27th of February last, the action was pending, that of Don Pablo Ubarri against the succession of Don Jacinto Lopez. Facts proved on page 118. Fifth. Whereas, the accused in this case has observed good conduct, has no penal precedents and has not been engaged, Don Pablo Ubarri having waived his right to be a party in the proceedings; pages 29 over. 40 over, 42 to 44 over and 45 over. Sixth. Whereas, the District Attorney asked that the accused be acquitted, Doña Concepción Laborde, the defense making the same petition in behalf of the accused, now therefore, the facts in the proceedings do not constitute the crime of embezzlement provided in No. 1st of Section 562 of the Penal Code, nor any other of those provided and punished by said Court, because the action being pending of execution, said action of Don Pablo Ubarri against the succession of Don Jacinto Lopez cannot be said at least for the present, that the facts have been in prejudice real and effective, which requisite is indispensable for the existence of said crime, and must serve as the basis for the fine which must be imposed in addition to the arrest in its grade minimum and medium provided by law to the party declared guilty.

A part that even though the action may be favorable to Ubarri, the judgment ending the case, he cannot suffer any damages because the wood has been obtained, those which were ordered to be cut by Doña Concepción Laborde. Having seen rules 51 and 52, for the application of the Penal Code; declares. That the facts proved in the proceedings, do not constitute crime, and therefore he must acquit and did acquit the accused, Doña Concepción Laborde y Rapp, dismissing the case with regard to Martin Ylanza, Eleuterio Rivera, Pedro Jose Rivera and Jose Baez; and *and* ordering that the wood secured remain subject to the attachment made by Don Pablo Ubarri against the succession of Don Jacinto Lopez. Consult these sentences with the Hon. Audience Court of the territory, to which Court this proceeding should be taken through the usual channels after citation of the parties. It was thus ordered and signed by said Hon.
246 Judge and I certify:—Enrique Diaz Guijarro—Esteban Calderon.

Judgment of the Higher Court.

Attorney Don Eduardo Rodeyro y Garcia, Clerk of Chamber of the Real Audience of Porto Rico; I Certify: that by the Court has been declared the following sentence: Number 998—In the City of

San Juan the Baptist of Porto Rico, October 8, 1888. Having seen the criminal action pending and still pends in this Court delivered to us by the Cathedral Court of Justice and followed between parties, on one side Don Tomas Caballero (Procurador) representing Don Pablo Ubarri, as private accuser, on the other, the prosecuting attorney, and on the other the (Procurador) Don Jose Palacios, in behalf of Doña Concepción Laborde y Rapp de Lopez, born in Dorado and of that vicinity, of fifty years of age, widow, dedicated to household duties, knowing how to write and read, and at large charged of attempted theft Don Jose Figueras, (Magistrate) being the one commissioned to prepare the decision of the Court. Accepting the findings set forth in the judgment appealed. Seventh—Whereas, the Court acquits the person charged and declares the costs to be defrayed; Eighth: Whereas, the private accuser prays that the person charged be sentenced to the proper penalty in accordance with subdivisions 1 of Section 562 of the Penal Code and other accessory penalties thereto. Ninth. Whereas, the Prosecuting Attorney in this second instance asks that the Court declare the facts charged as constituting the crime of attempted theft and sentence the person charged to the penalty of 375 pesetas or if she fails to pay that she be reduced to prison and the payment of costs. Tenth, Whereas, the Counsel for the defendant prays the *the* person charged be acquitted. 1, Whereas, the owners of a personal property who should have removed it from the person who may legitimately have it in his possession, to his prejudice or the prejudice of a third party, commits the crime of theft defined in subdivision 1 of Section 562, and punished by Section 561 of the Penal Code. Whereas, there is not only damage costs by the act committed in the case at bar to the person who legitimately had the thing in its possession who has the judicial Depository of the same, who may have been charged with negligence or carelessness in the care of the thing trusted to him from the moment that his vigilance not effective, but also damaged to the third party Don Pablo Ubarri, in whose behalf there was a provisional attachment on all things attached and
247 therefore on all and every one of the parts that constitutes the whole part of which were the trees felled. 3—Whereas, the crime was not consummated because the things stolen were recovered before the persons charged could benefit by the things and if the crime frustrated, was also the damage that to the depository as well as the third party may have been caused, and therefore the penalty corresponding to the crime such as it appears from the proceedings is that of fine, as being that inferior in grade to the penalty of Arresto Mayor *en sus grades minimo y medio*, as there does not lie the additional penalty of the tripple of the damage caused, for the reason set forth in this decision, but to the accessory penalties to the principal punishment and to the payment of costs. After examining the Sections 561, 562, 60 and 74 of the Penal Code, we rendered judgment as follows: That we should reverse and do reverse the judgment appealed and should declare: 1—That the facts set forth as proven in the proceedings constitute the crime of attempted theft defined and punished by the said Section. 2—That the author

of said crime from confession, statement of witnesses, documentary evidence and statement of experts is Doña Concepción Laborde. 3—That she has incurred in the penalty of fine and payment of costs. 4—That she has not incurred in any civil responsibilities. We therefore sentence Doña Concepción Laborde y Rapp de Lopez, to the payment of 375 pesetas fine, and in case of insolvency to the person to the arrest of the accused, at the rate of 1 day in prison for every $12\frac{1}{2}$ pesetas that she fails to pay and to the payment of costs, and we approve a preventive attachment in the property of the person charged and order that the lumber recovered be subject to the result action that Don Pablo Ubarri sustains against the succession of Jacinto Lopez. This is our sentence pronounced and signed and entered by us. Juan R. Rames—Antonio M. Mejanueta—Jose M. Figueras.

248 Defendant offered the witness Joaquin Matienzo to sustain the issues in his behalf. This witness limited his testimony to the character and value of the lands referred to in the Complaint, and testified, as follows:

That the lands in question were worth from two to fifty dollars per acre; that it depended upon the quality. Witness purchased land at five dollars per acre. The lands in question were worth, according to quality, $2.00, $10.00, $15.00, $50.00, and $100.00, per acre. He could not tell how many acres there were of lands worth $100.00 per acre, nor the number of cuerdas of other prices, respectively. A sale was made of a one-fourth ($\frac{1}{4}$) part of these lands in 1895 or 1896 for the sum of eight thousand (8,000) pesos, Provincial Money.

All this property was sold for Thirty-Five Thousand Dollars, Gold, ($35,000.00), sometime between 1898 and 1902.

Francisco de P. Acuña, called as a witness in behalf of the Defendant, testified, as follows:

That he was 68 years of age, and a practicing attorney at law.

That he has been practicing law for many years in Porto Rico, approximately since the year 1862, during which time he knew Pablo Ubarri and acted for him in the capacity of attorney. In connection with the proceedings taken in the courts by Pablo Ubarri Capetillo against the Sucesión Laborde, Pablo Ubarri had in his favor an account-current on behalf, or in the name of, the owner of the plantation "San Antonio." Based on that account he filed suit, beginning with executory proceedings. Afterwards there were carried on the ordinary proceedings or declaratory action, as it was called in Spanish law. That procedure was followed up. The Sucesión Laborde was represented by Counsel, and the Judge of First Instance passed a judgment sentencing the Sucesión of Laborde to the payment of an account of over $20,000.00 and interest. The Sucesión appealed from that judgment and the Audiencia, or Superior Court, affirmed it, taxing costs to the Plaintiffs in Error. He did not recollect whether the case was taken to Madrid on appeal, but some time afterwards some steps were taken with regard to the compliance with the judgment. For the purpose of enforcing the

judgment an appraisement was made of the property of the Sucesión and a public sale had. The ordinary processes were conducted—that is, of having edicts published, and on account of no bidders having appeared Mr. Ubarri, the Plaintiff, asked that the properties which were sold at auction be adjudged to him on account of no bidders having appeared. In this way it was that he acquired the land and machinery. He did not remember if any other appurtenances were included in the action. This was his connection as a lawyer in that case. After the judgment there was an order or, as it is called in Spanish, an "auto," adjudicating to him this property. Mr. Ubarri was unquestionably a very influential person in Porto Rico at that time, but that influence covered simply the political life of the country. In the offices of Captain-General and Governor-General of the Island his word carried great weight, and his suggestions were almost always, in every instance, accepted by the Governor-General, but in the courts of justice Mr. Ubarri did not have any such influence. If he did attempt to exercise such an influence he would have failed. "I am not at all acquainted, or know anything, that he had made use of such influence in this particular case. To me as his lawyer he never made any suggestion or recommendation save to follow the ordinary procedure at law."

249 The witness stated that he was a lawyer for Ubarri in various cases. The witness stated that he was not intimately related with Mr. Ubarri; that he was simply the lawyer of the latter and in that capacity had his full confidence. With this explanation, judging from the personal acquaintance with Mr. Ubarri, or basing the knowledge of the witness upon his personal traits he believed him to be incapable of using his influence to obtain any benefit in a civil action. Witness repeats that Mr. Ubarri wielded great influence in political matters in Porto Rico, and that on account of such influence he had both friends and enemies. Witness was never the representative of the estate, or Sucesión, of Jacinto Lopez y Martinez. He never had any connection with the partition of this property, nor was he ever the adviser of this Sucesión. He had charge of the division of the property of Mrs. Pablo, the widow. He had nothing to do in an official way with the partition of the property of the said Jacinto Laborde y Martinez as "Contador" (accountant), but he did act in the capacity of Counsel in the testamentary proceedings of Mr. and Mrs. Pablo Ubarri, not as Contador, because the property "San Antonio" was subject to adjudication in the testamentary proceedings of both Mr. and Mrs. Ubarri.

There having been submitted to the witness one of the exhibits, being the protocolization of the property of the said Jacinto Laborde y Martinez, witness testified that, in view of the fact that he had intervened in hundreds of testamentary proceedings, he had forgotten that he had intervened in this one, and that what he was able to bring to his mind was that all of the data or information necessary for this proceedings must have been taken to him and his participation in the matter must have been in accordance with the desire of the interested parties to ascertain the legal form of a deed of partition.

Witness had taken no part in politics until the year 1898. Prior

to that time he was elected Deputy to the Spanish Cortes. During the Spanish time in the Island he was a lawyer and not a politician.

250 Martin Lassa, called as a witness for the Defendant, limited his testimony to the value of the lands referred to in the Complaint.

This was all of the evidence submitted to the jury by either Plaintiffs or Defendant.

Thereupon the case was argued to the jury by Counsel for the respective parties. After the argument, and before the Court charged the jury, Counsel for Defendant moved the Court to give to the jury instructions in manner and form, as follows:

I.

The burden of proof is upon the Plaintiffs to establish to a reasonable certainty that the taking of the property in question was wrongful, and that said wrong was done by or caused to be done by Pablo Ubarri.

II.

There is no presumption from the fact that Pablo Ubarri was a powerful and influential man, that he exercised such power or influence in committing said wrong.

III.

There is no sufficient proof to establish, even inferentially, that Pablo Ubarri exercised his power or influence in wrongfully using the process of the courts.

IV.

Even if the jury find, as a matter of fact, that Pablo Ubarri exercised his power and influence to remove judges and use the process of the courts for his own benefit, the jury cannot legitimately infer that he exercised such power or influence in this case, unless there is direct evidence to that effect.

251 V.

If the jury find that there was any wrong committed on the part of any officers of the court in using the judicial process, Pablo Ubarri is not responsible therefor unless the jury find from the evidence that he caused the said officers to commit such acts.

VI.

If the jury should find that any wrong was done and that Pablo Ubarri was responsible therefor, the damages resulting must be assessed on the value of the property obtained at the time when the property was delivered into the possession of the said Pablo Ubarri.

VII.

Such damages as the jury find were caused to these Plaintiffs, if they find such to be the case, shall be assessed to this Defendant only in one-fifth thereof.

The Court declined to give the said instructions, as asked, to which action of the Court counsel for Defendant then and there duly excepted.

The Court thereupon charged the jury, as follows:

GENTLEMEN OF THE JURY: This, as you have already seen from what you have already heard of it, is a suit by Jacinto Lorenzo Lopez Laborde and others, some six or seven persons in all, as heirs of the late Jacinto Lopez Laborde, against the Succession or estate of Pablo Ubarri y Capetillo. The prayer of the Complaint asks judgment against the Succession for damages which they estimate and lay at $156,750.00 (American dollars), with interest thereon from whatever date in the year 1889 the evidence has shown you that their cause of action, if any they have, accrued.

Plaintiffs set forth in their Complaint and by the evidence, that their cause of action against this Succession or estate accrued because this man Pablo Ubarri, who was given by the widow of Jacinto Lopez Laborde a power of attorney to attend to her business, acted
252 in bad faith and by his influence and power, after getting a judgment for some Seventeen Thousand Pesos and costs against the estate of said Jacinto Lopez Laborde, then proceeded under the execution and through his influence and power, with both the taxing officers and the court officers, had the land valued at such a bagatelle as that he purchased the whole estate at the sale thereunder for his debt plus the taxes, which debt of his own amounted, all told, to something about Twenty-four Thousand Pesos, but Plaintiffs claim the estate was then worth more than Three Hundred Thousand Pesos.

It devolves upon the Plaintiffs in this case, as it does in every other civil suit, to prove their claims by a preponderance of the evidence, but that does not necessarily mean that they must have the most witnesses or the most documents, but that the evidence must preponderate in their favor in your minds as reasonable men. Although the suit was originally brought against Pablo Ubarri é Yramategui, Rufino Ubarri é Yramategui, José Maria Ubarri é Yramategui, Buenaventura Ubarri é Yramategui and Modesto Ubarri é Yramategui, as the Succession of the said Pablo Ubarri, all of the Defendants save Buenaventura Ubarri were either not served, or, after being served, were dismissed from the cause through one legal pleading or another, but the Court instructs you, as it has presumed, because Defendants have not shown the contrary, that these Defendant heirs took the estate of their father, the said Pablo Ubarri y Capetillo, without benefit of inventory, and hence became liable for all the debts which that estate owed, and therefore service upon one of them is sufficient to authorize the Court to give a judgment against the

Succession for whatever amount, if any, you may, in your discretion, find to be due.

Notwithstanding, Gentlemen, that there is evidence in the cause tending to show the tremendous power and influence that this man Pablo Ubarri had over officials, and perhaps courts and officers of the Island of Porto Rico, during his lifetime, yet, unless you believe from a preponderance of the evidence that he exercised such influence banefully in the levying of the execution in question, you should find for the Defendants, because under the evidence it is clear that whatever wrong, if any, he did to this estate, was done by causing it to be appraised and offered for sale and buying it in at the tax-sales and on this execution, for much less than its actual value;

253 in other words, the wrong must have been Ubarri's, because a wrong done by court officers as and of themselves, without his influence, would not bind these Defendants, but the fact that Pablo Ubarri gained advantage, if you believe from a preponderance of the evidence that he did, from the wrongs done, if you believe there were wrongs done, may be taken into consideration in determining, in connection with the other evidence in the case, whether or not such wrong-doing was brought about by his wrongful influence, if any.

Remember, Gentlemen, that this is not a suit to recover any specific property. All the property of which it is alleged these Plaintiffs were deprived, has gone into the hands of innocent third parties for value and without notice and is forever gone beyond recovery so far as these Plaintiffs are concerned, and their only remedy is the one they are asking here in this suit, that is, a judgment against the estate for the amount of their damages, they taking their chances of being at some time hereafter able to collect such damages on execution from the Defendants as may be proper. With that part of it, that is, the collection, you have nothing to do.

There is no question of any statute of limitations for you to consider, Gentlemen. The Court has settled all those matters on the record, and the only question for your consideration is whether or not, after the said Ubarri got his judgment against the estate of the father of these Plaintiffs, he collected the sum due him in an oppressive manner and collected in fact more than was due him. From the evidence you will therefore find the value of his judgment and costs and interest and the value of the property, together with the taxes due thereon, that he caused to be levied upon, and deduct the amount of his judgment and the amount of the taxes and costs, expenses and interest as shown by the evidence as to both from the true value of the property he took at the time he took it, and the balance will be the measure of damages which these Plaintiffs have sustained, together with interest thereon at six per centum per annum to date since the date you believe such property to have been taken.

If you do not believe by a preponderance of the evidence that Pablo Ubarri by undue influence, fraud and oppression did so deprive these people of their property, you must find for the Defendants.

254 You are the sole judges of the weight of the evidence, Gentlemen, and if you believe that any witness has wilfully sworn

falsely, you may disregard the whole, or any portion, of his evidence, unless the same is corroborated by other evidence, facts or circumstances in the case.

Two forms of verdict will be given you: one finding for the Plaintiffs and assessing their damages at whatever sum you believe to be warranted under the evidence, and to be signed by one of your number as Foreman; the other will be to find for the Defendants, and to be signed in the same manner. One of these verdicts, as you may believe to be right and proper, will be returned into Court by you; the other discarded. All the pleadings and exhibits in the case will be given you to carry to your room during your deliberations. The evidence you must remember for yourselves and your recollection of it must be taken rather than that of the Court or of Counsel.

And, finally, Gentlemen, as American courts and jury systems are young in the Island, it behooves you to so act that the example by your verdicts will be approved because of being just and right. It is hoped that you will arrive at a verdict so that a mistrial may not result, with great expense to the parties and to the Government. You must decide this case upon the evidence that has been introduced before you here, both oral and written, and upon these instructions, and not upon your own whims or upon any thing any of you may happen to know or think you know outside of the record. You were sworn and accepted in the case because it is believed you are honest men. If you have any knowledge in this case outside the record upon which you will base your verdict, then you wrongfully stated, when you were accepted, that you would render an impartial verdict upon the law as given you by the Court and the evidence presented in the case.

Jury duty is the highest duty any citizen can perform. When the citizen fails to perform that honestly and conscientiously, then Government itself to that extent fails. You are responsible to nobody but the law and your country and your conscience. No one has a right to question you for your verdict in this case and none of you have a right to tell anybody how you stand on it or how you voted on it. It is presumed, Gentlemen, that no confidence has been misplaced in you and that you will do your full duty by
255 both parties in the cause.

With these instructions the Court confidently submits the cause to your keeping, and with your verdict the Court and the parties must be satisfied if it is within the law.

At the close of the charge of the Court, Counsel for the Defendant noted an objection and exception to all the charge of the Court, for the reasons heretofore assigned in the motions to dismiss and for peremptory charge. And later filed the following exceptions:

Counsel for Defendant make a general objection to the charge as given and except to the same for the reasons heretofore expressed by them in the motion to dismiss and the motion to find for the Defendant.

Defendant excepts to that part of the charge reading as follows:

"The prayer of the Complaint asks judgment against the Succes-

"sion for damages which they estimate and lay at $156,750 (Ameri-"can dollars), with interest thereon from whatever date in the year "1889 the evidence has shown you that their cause of action, if any "they have, accrued.

The particular objection made to this part of the charge is that it is in effect a declaration by the Court to the jury that if any cause of action accrued at all, it accrued in the year 1889, whereas, under the evidence in the case, if any cause of action accrued, it would have accrued under the laws of the land prior to 1889 and subsequent to the death of Jacinto Lopez Laborde.

Defendant further excepts to that part of the charge which reads:

"But the Court instructs you, as it is presumed, because Defend-"ants have not shown the contrary, that these Defendants' heirs "took the estate of their father, the said Pablo Ubarri y Capetillo, "without benefit of inventory, and hence became liable for all the "debts which that estate owed, and therefore service upon one of "them is sufficient to authorize the Court to give a judgment against "the Succession for whatever amount, if any, you may, in your "discretion, find to be due.

Counsel for Defendant claim that as a matter of law no such presumption exists, as stated by the Court.

And, further, that the Court has erred in referring to *these* Defendants, since there is but one Defendant, Buenaventura Ubarri, before the Court. And to submit this charge to the jury in this manner and form, together with the statement by the Court that

256 service upon one of them (referring to all the heirs) is sufficient to authorize the Court to give a judgment against the Succession for whatever amount they may in their discretion find to be due, is in effect authorizing the jury to render a verdict against all of the members composing the Succession or estate of Pablo Ubarri y Capetillo, when by the records of this Court and the statement of Your Honor three of the heirs are not within the jurisdiction of this Court.

Counsel further says that in the absence of such other heirs, Plaintiffs cannot recover a judgment upon the alleged cause of action set forth in the Complaint.

Counsel for Defendant further except to the charge of the Court in that in various places reference is made to Defendants in the plural, for the reason that in effect the charge of the Court submits to the jury the possible liability of all of the heirs of Pablo Ubarri y Capetillo as such, although they are not in Court,—thus leaving the case go to the jury in such a manner that they may find and render a verdict as against this Defendant for the entire possible liability of all the heirs.

Counsel for Defendant further except to that part of the charge of the Court beginning with the words: "Notwithstanding, Gentlemen, that there is evidence in the cause tending to show the tremendous power and influence that this man, Pablo Ubarri, had over officials", and ending with the words "may be taken into consideration in determining, in connection with the other evidence in the case, whether or not such wrong-doing was brought about by his wrongful influence, if any".

Counsel believe that this part of the charge is erroneous in that it leaves the jury to infer that the mere efforts of Pablo Ubarri y Capetillo to collect his debt of Seventeen Thousand Pesos, which confessedly was due to him, was wrongful because he had or might have had in mind ultimately obtaining possession of the property of Plaintiffs.

There can be no wrong in availing one's self of legal means and methods to recover a debt and to make the processes of the Court effective. Counsel believe that the language of the Court last excepted to, presents to the jury the obligation or liability of Pablo Ubarri y Capetillo, or of his heirs, if any, in such a vague and general manner as to give the jury an erroneous notion of
257 what constitutes liability in the given case and also leaves them free to adopt standards and ideas not supported by law.

Defendant further excepts to that part of the charge which states: "Their only remedy (referring to the Plaintiffs) is the one they "are asking here in this suit, that is, a judgment against the estate "for the amount of their damages.

As stated continuously and consistently herein by Counsel for Defendant, the action as it now stands is not an action against the estate of Pablo Ubarri y Capetillo, since by the records and the action of the Court, four of the heirs composing the Succession are not before the Court and no judgment can be rendered in this Court against the estate or Succession as such.

Defendant further excepts to that part of the charge which says: "The only question for your consideration is whether or not, "after the said Ubarri got his judgment against the estate of the "father of these Plaintiffs, he collected the sum due him, in an "oppressive manner and collected in fact more than was due him.

Counsel insists that this language is too vague and indefinite and leaves to the jury too wide a latitude or too much freedom in determining what is or was the legal liability. The term "oppressive manner" does not express in legal terms any such wrongful conduct on the part of Pablo Ubarri y Capetillo as would in law make him or his heirs liable.

Counsel for the Defendant except to that part of the charge which reads: "If you do not believe by a preponderance of the evidence "that Pablo Ubarri by undue influence, fraud and oppression did "so deprive these people of their property, you must find for the "Defendants.

This part of the charge is excepted to for the reasons last above stated, that the employment of general legal terms, such as undue influence, fraud and oppression, does not adequately or properly submit to the jury the facts upon which the law might create a liability.

We believe that Your Honor should more definitely indicate to the jury the facts which, under the evidence herein, might in law constitute such alleged undue influence, fraud and oppression, from which the liability of this Defendant might be determined.

The Defendant further excepts to the refusal of the Court to

charges Nos. II, III, IV, V and VII of the charges requested
258 by the Defendant, inasmuch as they were not clearly, or even in substance, included in the general charge of the Court.

The jury then retired and thereafter returned into Court with a verdict in favor of Plaintiffs, which verdict is, as follows:

"In the District Court of the United States for Porto Rico, April 19, 1907.

"JACINTO LORENZO LOPEZ LABORDE ET AL.
vs.
"BUENAVENTURA UBARRI.

"Now comes the jury herein and returns the following verdict, " to wit:

"We, the jury, find for the Plaintiffs and assess their damages " in the sum of Ninety-Nine Thousand Dollars ($99,000.00).

" H. W. VODRA, *Foreman.*

Upon which the Court, then and there, immediately entered judgment.

Thereafter the Defendant filed a motion for new trial, which said motion is, as follows:

"In the District Court of the United States for Porto Rico.

At Law.

"JACINTO LOPEZ LABORDE ET AL., Plaintiffs,
vs.
"PABLO UBARRI YRAMATEGUI ET AL., Defendants.

"Motion for New Trial.

"And now comes the Defendant, Buenaventura Ubarri, and moves " that the verdict herein rendered be vacated and a new trial ordered, " for the following reasons:

259 "First. Said verdict was not sustained by sufficient evi- " dence.

"Second. There was no testimony tending to sustain the verdict.

"Third. Said verdict was contrary to law.

"Fourth. The Court erred in refusing to instruct the jury to render a verdict for the Defendant, because:

(*a*) The cause of action had been prescribed by law (Civil Code, § 1869-2), more than one year having elapsed since the cause of action arose.

(*b*) The cause of action had been prescribed by law (Civil Code § 1865), more than fifteen years having elapsed since the cause of action arose.

(*c*) The cause of action attempted to be proved does not survive by law as against the heir or heirs of the wrong-doer.

(*d*) No cause of action was proved or established against the Defendant.

(*e*) The cause of action attempted to be proved was a collateral attack upon a judgment of a competent tribunal in a suit between the parties, and was *res judicata*.

(*f*) And other errors of law.

"Fifth. The Court erred in denying the motion of Defendants for want of indispensable parties and no cause of action shown, because:

(*a*) The action had prescribed as set forth above under "Fourth", (*a*) and (*b*).

(*b*) Non-survival of the action attempted to be proved as against the heir or heirs.

(*c*) One of the heirs composing a Succession is not liable for the whole of an obligation of the ancestor arising *ex delicto*.

(*d*) And for other errors of law.

"Sixth. The Court erred in certain particulars of its general charge to the jury, excepted to by the Defendant.

"Seventh. The Court erred in refusing certain of Defendant's specific charges, No. — requested by Defendant.

"Eighth. There were other errors of law prejudicial to the Defendant.

"(Sgd.) WM. H. HAWKINS,
"*Counsel for Defendant, Buenaventura Ubarri.*

This motion having been argued and submitted to the Court, it was thereafter over-ruled, to which action Defendant then and there duly excepted.

260 And, now, in furtherance of justice, and that right may be done, the Defendant presents the foregoing as his Bill of Exceptions in this case, and prays that the same may be considered and allowed and signed and certified by the Judge, as provided by law.

Allowed 7/2/07.
B. S. RODEY, *Judge*.

261 In the District Court of the United States for Porto Rico.

No. 386.

JACINTO LORENZO LOPEZ LABORDE ET AL.
vs.
BUENAVENTURA UBARRI.

I, H. H. Scoville, Clerk of the District Court of the United States for Porto Rico, do hereby certify that the foregoing 260 pages, numbered from 1 to 260, inclusive, to be a true and correct copy of the record and proceedings in the above entitled cause as the same remains of record and on file in the office of the clerk of said court, and that the same constitute the return to the annexed writ of error.

In testimony whereof, I have hereunto set my hand and the seal of said District Court, this 2nd day of July, A. D. 1907.

[Seal United States District Court for the District of Porto Rico.]

H. H. SCOVILLE,
Clerk District Court of the U. S. for Porto Rico.
By A. M. BACON,
Deputy Clerk.

262 In the District Court of the United States for Porto Rico, Sitting at San Juan.

JACINTO LORENZO LOPEZ LABORDE ET AL.
vs.
BUENAVENTURA UBARRI Y YRAMATEGUI.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable Bernard S. Rodey, Judge of the District Court of the United States for Porto Rico, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said District Court of the United States, before you, between: Jacinto Lorenzo Lopez Laborde, Maria Consolación Lopez Laborde, Manuel Demetrio Lopez Laborde, Enrique Lopez Laborde, Maria Concepción Graxiana Lopez, (By her Grandmother, Concepción Laborde), Francisca Luisa Lopez Laborde, Defendants in Error, and Buenaventura Ubarri y Yramategui, Plaintiff in Error, a manifest error hath happened to the great damage of the said Buenaventura Ubarri, Plaintiff in Error, as by his complaint appears,—we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given that, then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this Writ, so that you have the same at the City of Washington within sixty days from this date, or at the next term of the said Court, to be then and there held, that the record and proceedings aforesaid being inspected the Supreme Court of the United States may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

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Witness: The Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 22nd day of June, 1907.

H. H. SCOVILLE,
Clerk District Court of the U. S. for P. R.

Allowed by:
B. S. RODEY,
Judge of the District Court of the United States for Porto Rico.

Service of the within Writ of Error and receipt of a copy thereof is hereby admitted this 24 day of June, 1907.

[Seal United States District Court for the District of Porto Rico.]

SWEET, ROSSY & CAMPILLO,
Attorneys for Defendants in Error.

264 [Endorsed:] No. 386. In the District Court of the United States for Porto Rico, sitting at San Juan. Jacinto Lorenzo Lopez Laborde, *et al.*, *vs.* Buenaventura Ubarri y Yramategui. Writ of Error. Filed Clerks Office, United States District Court. June 22, 1907. H. H. Scoville, Clerk of the Court. By A. M. Bacon, Deputy. Francis H. Dexter, Solicitor for Plaintiff in Error. D. P. 345.

265 In the District Court of the United States for Porto Rico, Sitting at San Juan.

JACINTO LORENZO LOPEZ LABORDE ET AL.
vs.
BUENAVENTURA UBARRI Y YRAMATEGUI.

Citation.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Jacinto Lorenzo Lopez Laborde, Maria Consolación Lopez Laborde, Manuel Demetrio Lopez Laborde, Enrique Lopez Laborde, Maria Concepción Graxiana Lopez, (By her Grandmother, Concepción Laborde), Francisca Luisa Lopez Laborde, or Messrs. Sweet, Rossy & Campillo, their attorneys, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States within sixty (60) days from the date of this Writ, or at the next ensuing term thereof, pursuant to a Writ of Error filed in the Clerk's Office of the District Court of the United States for Porto Rico wherein Buenaventura Ubarri y Yramategui is Plaintiff in Error and you are Defendants in Error, to show cause, if any there be, why the judgment in the said Writ of Error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness: The Honorable Bernard S. Rodey, Judge of the District Court of the United States for Porto Rico, this 22 day of June, 1907.

[Seal United States District Court for the District of Porto Rico.]

B. S. RODEY, *Judge.*

Attest:

H. H. SCOVILLE, *Clerk.*

I hereby acknowledge service of a copy of the foregoing citation this 24th day of June, 1907.

SWEET, ROSSY & CAMPILLO,
Attorneys for Defendants in Error.

266 [Endorsed:] No. 386. In the District Court of the United States for Porto Rico, sitting at San Juan. Jacinto Lorenzo Lopez Laborde, *et al.*, *vs.* Buenaventura Ubarri y Yramategui. Citation. Filed Clerk's Office, United States District Court. June 22, 1907. H. H. Scoville, Clerk of the Court. By A. M. Bacon, Deputy. Francis H. Dexter, Attorney for Plaintiff in Error. D. P. 345.

267 In the Supreme Court of the United States.

No. 137, October Term, 1908.

BUENAVENTURA UBARRI E YRAMATEGUI, Plaintiff in Error,
v.
JACINTO LOPEZ LABORDE ET AL., Defendants in Error.

It is hereby, this 17th day of July in the year 1908, stipulated and agreed by and between the parties hereto, by their respective attorneys, that the testimony of Francisco P. Acuna and Joaquin Matienze, as it now appears in narrative form in the transcript of record now herein on file in this Court, be omitted from the said record and not printed; and that, in lieu thereof, the full and complete testimony of said witnesses, attached to this stipulation, be included in said transcript, and substituted in the place and stead of the testimony of said witnesses as the same now appears in said transcript, and duly printed.

WALTER D. DAVIDGE,
HILARIO CUEVILLAS HERNANDES,
Attorneys for Plaintiff in Error.
WILLIS SWEET,
Attorneys for Defendants in Error.

268 In the District Court of the United States for Porto Rico.

JACINTO LOPEZ LABORDE ET AL.
versus
BUENAVENTURA UBARRI ET AL.

Transcript of the Testimony of the Witnesses Joaquin Matienzo and Francisco de P. Acuña.

269 JOAQUIN MATIENZO called as a witness in behalf of the plaintiffs, after being duly sworn, testified as follows:

Direct examination by Mr. SWEET:

Q. I simply desire to ask you, if you can do so, whether or not the signatures I am about to hand you were made by your uncle in

connection with this business. (Handing the witness several papers) Will you please examine them and see if you know?

A. This is his as attorney in fact: this is also, and this too (pointing to three different documents).

Mr. SWEET: That is all.

No cross examination.
Witness retires.

270 *Testimony for the Defense.*

JOAQUIN MATIENZO recalled as a witness in behalf of defendant testified as follows:

Direct examination by Mr. HAWKINS:

Q. What is your name?
A. Joaquin Matienzo.
Q. Your age and occupation?
A. Thirty-eight years of age; merchant and planter.
Q. Have you always lived in Porto Rico?
A. Yes, sir.
Q. Do you know what lands in this case are in question?
A. Yes, sir.
Q. In what way do you know about them?
A. I know them because I have been a long time going there.
271 Q. When the first time?
A. Three years ago, but I was also there before, prior to that time.
Q. Did you know these lands in 1885, '86 and '89?
A. I arrived in Porto Rico in the year 1890. I knew them subsequently.
Q. Are you an owner of farm properties here in Porto Rico at the present time.
A. Yes, sir.
Q. Have you been for some time?
A. Yes, sir.
Q. Are you well acquainted with the values of different classes of farm lands?
A. Yes, sir.
Q. Can you tell the jury then as to the relative value of this land as far back as you know it recently, or as to what price it sold for, this land in question, the relative value as compared with other lands in that vicinity?

Mr. SWEET: I object to this. I would not raise the objection of lack of foundation, although I think it is there as far as that is concerned, but all this property and our dealings with it and its disposition were all in 1886, 1889, and he didn't come here until 1890.

The COURT: It was adjudicated to you in 1889. He saw it a year afterwards.

Mr. SWEET: He came to the Island in 1890, he says.
272 Whether he went out there I don't know. I don't wish to be critical about it and if he knows all about land in that community and will tell what it is selling for and all about it, I don't object.

The COURT:

Q. Tell the jury what was the value of that land along about the time you first knew it in 1890, if you knew it at that time. Did you know it at that time?

A. No, sir; I didn't know the farm at that time because I came here as a child, but I knew subsequently.

Mr. HAWKINS:

Q. About what time was the first time you knew it?

A. The first time I don't recollect very well. It may have been twelve or fourteen years ago. I haven't the date in my mind. I saw it when this railroad was built. I travelled on that railroad on pleasure trips and on my trips buying cattle, buying cows.

The COURT: Find out if he knows what its value was at that time.

A. The price or value of the property at that time was quite different from the present one.

Mr. HAWKINS:

Q. What price?

A. The former price changed. There were lands called 'cienaga,' marshy lands; there were lands of the third class; there were, and there is still second class lands and there were first class lands, called 'vega' or alluvial lands; lands adjoining rivers, and there were lands then called 'baldios' or government lands.

The COURT: Well, did these lands in question have all those kinds of land among them?

A. Yes, sir; there were 'manglar' or marshy, wet lands,
273 alluvial lands.

Q. Then tell, if you know, what they were worth in the market in the years that you first knew them.

Mr. SWEET: I will interpose the formal objection on the ground of incompetency.

The COURT: Overruled.

Mr. SWEET: Take an exception.

A. In the year 1890 when I arrived in Porto Rico I had no knowledge of that matter, although I spent some time on a farm in the country in my boyhood. But subsequently, that is afterwards, in as much as we all had devoted ourselves more of less to farming, I acquired some knowledge of them.

The COURT: Tell that knowledge. Don't go about it so much.

Mr. HAWKINS:

Q. What was the value at that time?

A. Prices changed. There were lands worth two dollars an acre and there were lands worth fifty or more. It depended on the quality. Some time afterwards I purchased land at $5.00 per acre.

Q. I am asking about these particular lands, if he can tell the jury what their value was about 1894 or 1895 when he first knew them, the different classes.

The COURT:

Q. What value did they have at that time? Tell him to give an approximate value if he knows. If he doesn't, say so.

A. I have just said that that property consisted of the various kinds of land that I have just described and that therefore the value at that time changed from $2.00 to $50.00 according to the quality; $2.00, $10.00, $15.00, $50.00, $100.00.

Q. How much land in that ranch was worth $100.00 per acre?

A. I could not tell you. Those first class lands, of superior
274 class.

Q. How many acres would be worth a hundred dollars of that whole property?

A. I could not tell you.

Q. Well, how many were worth $50.00?

A. In order for land to be worth a hundred dollars per acre, it has to be alluvial land or lands having a river passing by; plain land and land with a sufficient coat of vegetable soil to make it worth that price.

The COURT: Then this witness doesn't appear to be able to give much of an opinion about these things. Go on.

Mr. HAWKINS:

Q. Do you know about a sale of these lands after they were sold to Pablo Ubarri?

A. Yes, sir.

Q. About when was it?

A. The first sale was about 1895 or '96, about those years.

Q. Did that include all the lands involved in this suit?

A. No, sir; only a portion was sold for eight thousand pesos.

Q. What proportion did that part have to the rest; was it a third or fourth or what?

A. About a fourth of it because a portion sold belonged to one of the brothers who were four, and one of them sold a share.

The COURT:

Q. Which one sold a share?

A. Buenaventura.

Q. That is the defendant in this case?

A. Yes, sir.

Mr. HAWKINS:

Q. Are you the representative of Buenaventura here?
275 A. Yes, sir.

Q. Were you at that time?

A. No, sir; my deceased uncle, Julian Matienzo.

Q. Do you know of your own personal knowledge what the other heirs sold their portion at?

A. I think it was for thirty-five thousand pesos.

Q. I didn't ask him how much the whole sold for but I suppose that is what you mean. You mean the whole thing sold for $35,000.00?

A. Yes, sir.

Q. And that was about when?

A. That was afterwards; I don't remember the date; subsequently to 1898. I don't remember when it happened.

Q. Well, do you know at that time how these lands compared with surrounding lands? Were they better or worse?

A. Some portions of it were the same, some portions were better and some portions were worse.

Q. Could you say that it was an average farm?

A. It was more or less the same as the others.

Q. Do you know of any other sales of lands in the immediate vicinity; what they brought?

A. At that time; no, sir.

Q. From your knowledge of that land and the prices of lands, do you think that that $35,000.00 was a good price?

Mr. SWEET: At what time?

Mr. HAWKINS: At that time when it was sold, when he first knew it.

Mr. SWEET: I don't know that it makes any difference, but I haven't the remotest idea of what time they are talking about.

276

A. At that time the price of land was very low, very cheap; it sold very reasonable.

The COURT:

Q. About what time was that?

A. From 1898 to 1903 or '04 the lands were cheap.

Q. About what time did this sale for $35,000.00 take place?

A. Between 1898 and 1902.

Q. Did Ubarri still own it then?

A. Which?

Q. Any of the Ubarris?

A. Yes, sir; the heirs or succession.

Q. It was the heirs who sold it?

A. Yes, sir.

Q. There were four heirs then that owned it, were there?

A. After the distribution or partition of the property and after one of them had sold his share, the balance was adjudicated to one of the heirs; I am not sure which one.

Q. When did Pablo Ubarri die?

A. Let me think. I don't remember.

Q. More or less. Did he die since the American occupation?

A. Between 1893 and 1895. I think so; that is not a positive date. It might have been a year more or a year less.

Mr. HAWKINS: The witness is yours.

Cross-examination by Mr. SWEET:

Q. When did you come to Porto Rico, Mr. Matienzo?
A. In the year 1890 or the latter part of 1889. It was the 29th of November of that year, 1889.
277 Q. What did you do when you came here; what occupation did you follow?
A. I went to the house of my uncle and I have been there all my life, that is ever since.
Q. What kind of a house; mercantile house do you mean?
A. Yes, sir.
Q. It is the house you are now the manager of is it not?
A. Yes, sir.
Q. You are now the head of that house?
A. Yes, sir.
Q. How long did you serve there as a clerk?
A. Nearly all my life as a clerk. I have not been a partner.
Q. I say, Mr. Matienzo, in this house after coming to Porto Rico, in your uncle's house.
A. I have never been partner of that firm until now.
Q. Until now you were clerk all the time?
A. Yes, a clerk of the house with more or less large salary.
Q. When did you first commence to purchase agricultural lands?
A. Over eight years ago.
Q. And where did you purchase?
A. In Santurce, and during the life of my uncle I used to go very frequently to his properties every Saturday.
Q. When did you first examine the estate of the Lopez succession?
A. The first time I have already said I don't recollect, but the last time was three years ago.
Q. When I say visit, I mean when did you examine it from one end to the other so that you might know its value?
A. Well, I haven't gone over the whole thing because that
278 would be impossible.

The COURT: Yes, but tell when you did go over it the first time.

A. The first time I don't recollect but the last time is three years ago.

Mr. SWEET:

Q. The real fact is that you don't know much about the Lopez estate, is it not, Mr. Matienzo?
A. I don't know the whole of it but I have seen it. I know it by sight and I have been in it and run through it, since I was a boy.

The COURT: He knows the land more or less since he was a boy.

Q. Well, how much land have you ever bought here? Let us find out what he knows.
A. Now recently I have bought some land. I have purchased recently land for a hundred dollars, for which I was asked before ten dollars an acre.

Q. I didn't ask that. I asked him how much land he has purchased within five years?

The COURT:

Q. How much land have you purchased yourself? Let us get on with this case.

A. Personally I have purchased a number of farms of 200 acres, of two acres, and I have sold some.

Q. How long since?

A. Six or eight years ago. The last one that I purchased six years ago at Rio Piedras I sold.

Q. Oh, do you buy and sell land as a business speculation?

A. No, sir.

Q. What condition was the sugar mill in out at the Jacinto
279 Lopez estate when you were there?

A. Was it in 1885?

Q. When he was there.

A. Well, when I went to that place there wasn't anything of that kind. Mr. Ubarri had taken everything of that kind down and had it devoted to pasture, to a stock ranch.

Q. When did your uncle die, Mr. Matienzo?

A. Four years ago.

Q. And at that time you came into the management of the place?

A. No, I had been in charge of it for some time because he was sick, he was suffering from heart trouble.

Q. And you were buying cattle a good deal, did you say?

A. Yes, sir; for myself and for my uncle. I was his attorney-in-fact when he was in Spain sick and I was his general attorney-in-fact.

Q. When did you become the attorney-in-fact for Buenaventura Ubarri?

A. After the death of my uncle, Mr. Julian, he transferred the power that he had to me.

Mr. SWEET: That is all.

Witness retires.

280 FRANCISCO DE PAUL ACUNA called as a witness in behalf of defendant, after being duly sworn, testified as follows:

Direct-examination by Mr. HAWKINS:

Q. Will you give your name and age and occupation?

A. Francisco de Paul Acuña; 68.

Q. And your profession?

A. I am not practicing my profession as attorney at law.

Q. Did you not practice your profession as attorney here in Porto Rico for many years?

A. Yes.

Q. And will you please tell the jury approximately from what years?

A. Since 1862.

Q. Up until recently?

A. Yes, sir; until recently.

Q. During that time did you know Pablo Ubarri?

A. Yes, sir.

Q. Did you act for him in the capacity of attorney for him?

A. Yes, sir.

Q. Do you remember anything about a suit brought or do you remember Mr. Ubarri's consulting you in regard to the Succession Laborde?

A. Yes, sir.

Q. And do you remember some proceedings taken in the courts at that time?

A. Yes, sir; I remember.

Q. Will you tell the jury as far as you remember what took place and what were the things that Mr. Ubarri employed you

281 to do?

A. Mr. Pablo Ubarri had in his favor an account current on behalf or in the name of the owner of the plantation San Antonio, whose name I cannot recollect at present. Based on that account he filed suit, I think at the beginning by means of executory proceedings, afterwards it was the ordinary proceeding or declaratory action as it was called in Spanish law. That procedure was followed up. Mr. Laborde was represented by counsel or the succession of Laborde was represented by counsel and the judge of the first instance passed judgment sentencing the succession of Laborde to the payment of an amount of over twenty thousand dollars and interest. The succession defendant appealed from that judgment and the audiencia or the superior court affirmed that sentence, taxing costs to the plaintiffs in error. I don't recollect very well whether that case was taken to Madrid on appeal, but I do recollect clearly, plainly that some time afterwards some steps were taken with regard to the compliance with the judgment. For that purpose of enforcing the judgment an appraisement was made of the property of that succession and a public sale made of it. The ordinary processes were conducted, that is of having edicts published and on account of no bidders having appeared, Mr. Ubarri, the plaintiff, asked that the properties which were sold at auction, be adjudicated to him on account of no bidders having appeared. In this way it was that he acquired the land, the machinery and I don't remember if any other appurtenances which were included in that action. This was my connection as a lawyer in that case.

282 Q. After the judgment was there an order, or as it is called in Spanish, an 'auto,' adjudicating to him this bit of land?

A. Yes, sir.

Q. Well now, Mr. Acuña, during all those proceedings, or first I will say that it is in evidence in this case that Mr. Pablo Ubarri was a man of great influence with the courts and with the officials of the Island. During all those proceedings with which you had personal connection, do you know of any influence or of any act on the part of Ubarri to influence the court or officials in these proceedings

A. Mr. Ubarri was unquestionably a very influential person in Porto Rico at that time, but that influence covered simply the politi-

cal life of the country. The office of Captain General of the Island or Governor General of the Island, in those offices his word carried great weight and his suggestions were almost always in every instance accepted by the Governor General, but in the Courts of Justice Mr. Ubarri did not have any such influence. I understand or it is my opinion that if he did attempt to exercise such an influence, he would have failed, and I am not at all acquainted or know of anything that he had made use of such influence in this particular case. To me as his lawyer he never made any suggestion or recommendation save to follow the ordinary procedure at law.

Q. Were you his lawyer in a great many cases?

A. Yes, sir; in various cases.

Q. Then is it your opinion from your intimate knowledge in a professional way with Mr. Ubarri, that he was a man who
283 would influence or attempt to influence those employed by him in a professional way?

Mr. SWEET: I object to that question as incompetent.

The COURT: I don't know whether it is incompetent, considering what you put in on the other side.

Mr. SWEET: Our procedure was by proving what he actually did. If it is a matter of opinion, I shall reserve the right to bring in rebuttal.

The COURT: I cannot get away from the fact that it is competent.

Mr. SWEET: Then I shall reserve it for rebuttal.

Mr. HAWKINS: Do I understand that this is evidence that is going to allow rebuttal? If it is, this question is not of sufficient importance to make it necessary.

The COURT: I cannot say how far I will allow it.

Mr. SWEET: The matter of rebuttal is a matter of right.

A. I must clear up a point, and that is that I was not intimately related with Mr. Ubarri; I was simply his lawyer and in that capacity he did have my full confidence. With this explanation, judging from my personal acquaintance with Mr. Ubarri or basing my knowledge upon his personal traits, I believe him to be incapable of using his influence to obtain any benefit in a civil action. Mr. Ubarri, as I have already stated, was a man of great political influence. On account of that influence he had friends and enemies and on that ground I will not volunteer any comment.

Mr. SWEET: Now, if Your Honor please, I move to strike
284 that answer out. I insist that it is incompetent. He has been called to the witness stand and has stated that he was the confidential legal adviser of the person in question, Mr. Ubarri. He says that unquestionably Mr. Ubarri placed great confidence in him. Of that I have no doubt because Mr. Acuña is a lawyer of good standing at this bar for many years. With that I have nothing to say. But would it be expected that you are to call to this stand a confidential lawyer and have him testify——

The COURT: It is argument for the jury.

Mr. SWEET: I am objecting to it as improper.

The COURT: Ordinarily I would rule with you, but in the light of this case I cannot do it.

Mr. SWEET: I will take an exception.

The COURT: I will let it stand and I will reserve the right to restrict rebuttal on it because one is against the other. Proceed.

Q. Do you remember, or were you ever a representative of the heirs of Laborde, of Jacinto Laborde; that is, did you ever take part in the partition of the property of the Labordes as their representative?

A. No, sir; I have not been the representative of that succession.

Q. It is my fault for even asking such a question. Did you have any connection with the partition of the property? Were you the adviser of the estate of Jacinto Laborde?

A. No, sir; I had charge of the division of the property of
285 Mrs. Pablo Ubarri, the widow.

Q. Well, do you remember, Mr. Acuña, whether you had anything to do in an official way with the partition of the property of Jacinto Lopez as 'contador' I believe the word is?

A. No, sir; not with regard to the property of Jacinto Lopez, but I did act in such a capacity in the testamentary proceedings of Mrs. Ubarri; not as 'contador,' but acting as counsel in the testamentary proceedings.

Q. Well, with reference to the estate of Pablo Ubarri, do you mean?

A. Yes, sir: properties of Mr. Pablo Ubarri and wife of Pablo Ubarri, because that property San Antonio was subject to adjudication in the testamentary proceedings of Mrs. Ubarri and afterwards in the testamentary proceedings of Mr. Pablo Ubarri.

Q. (Handing the witness plaintiffs' Exhibit A) I will ask Mr. Acuña to just glance over this Exhibit which is in evidence and see if it recalls to him the facts set forth here.

The COURT:

Q. Can you tell him what it is.

Mr. HAWKINS: He will understand quicker than I could tell him, by just looking at it.

Q. Does that paper recall any facts to you, Mr. Acuña?

A. As a matter of fact, this document does bring to my mind those facts I had forgotten; I had not in mind those facts. This took place a good many years ago and I didn't think that I participated or took any part in it.

The COURT: Let the Court and jury understand. What is this, Mr. Hawkins?

Mr. HAWKINS: The protocolization of the property of the
286 Jacinto Lopez Laborde estate.

A. I said before that I did not participate or have anything to do with it, but I see now that I did intervene in it. In view of the fact that the testamentary proceedings in which I have inter-

vened are more than a hundred or are many hundreds, it is not to be wondered at that I should forget one of them.

The COURT:

Q. The Court and the jury can easily understand that, but does it call to your mind how it was or who you represented or what took place when you were called into these testamentary proceedings?

A. What I am able to bring to my mind is that all the data or information necessary for this proceeding must have been taken to me and my participation in the matter must have been in accordance with the desire of the interested parties to ascertain the legal form of a deed of partition.

Mr. HAWKINS: The witness is yours.

Cross-examination by Mr. SWEET:

Q. Is it not a fact, Mr. Acuña, that in the years from say 1880 and from thence on, you dedicated your time and your energy to your profession and that you scarcely ever had anything to do with politics?

A. I haven't entered into the political arena until the year 1898. Prior to that I was elected or appointed Deputy to the Spanish Court, which did not mean that it involved political antecedents, but the appointment was due to the fact that a person acquainted with the political status of the Island was needed in order that he
287 might introduce or present or ask for certain reforms needed for the country. By virtue of special circumstances I was unable to take possession of my position so that even this thing cannot be considered as part of my political career, it was very short lived.

Q. What I meant to ask and all I meant to ask was to confirm what I had understood, that during what is termed, Spanish days, you were regarded as a lawyer and not as a politician.

A. That is exactly the case. Until shortly prior to the establishment of the autonomous government or until the establishment in Porto Rico of the autonomous government, which was shortly prior to the American government.

Mr. SWEET: That is all.

Witness retires.

288 *Stenographer's Certificate.*

I, Arthur J. Harvey, Official Stenographer of the District Court of the United States, hereby certify that the foregoing document, consisting of nineteen typewritten pages, is a true and correct transcript of all the testimony of the witnesses Joaquin Matienzo and Francisco de P. Acuña in the case of Jacinto Lopez Laborde *et al. versus* Buenaventura Ubarri *et al.*, tried in the District Court of the United States for Porto Rico, in the month of April, 1907.

ARTHUR J. HARVEY,
Official Stenographer of the District Court of the United States for Porto Rico.

UNITED STATES OF AMERICA,
District of Porto Rico, ss:

I, John L. Gay, Clerk of the District Court of the United States for Porto Rico, do hereby certify that Arthur J. Harvey is the official stenographer of said court; that he was such official stenographer at the time of the trial of the case of Jacinto Lopez Laborde *et al. versus* Buenaventura Ubarri *et al.*, No. 386; that he made the stenographic notes at the trial of said case, and that the foregoing nineteen pages were transcribed by him from said stenographic notes.

Witness my official signature and the seal of said Court at San Juan, in said District, this 20th day of June, A. D. 1908.

[Seal United States District Court for the District of Porto Rico.]

JOHN L. GAY,
Clerk U. S. District Court for Porto Rico.

289 [Endorsed:] No. —. In the District Court of the United States for Porto Rico. Jacinto Lopez Laborde *et al., vs.* Buenaventura Ubarri *et al.* Transcript of the testimony of the witnesses Joaquin Matienzo and Francisco de P. Acuña.

290 [Endorsed:] Sup. Ct. U. S. No. 137. October Term, 1908. Buenaventura Ubarri e Yramategui, Plff. in Error, *v.* Jacinta Lopez Laborde *et al.* Stipulation as to Record. The Clerk will please file. Walter D. Davidge, Atty. for Plff. in Error. Walter D. Davidge, Attorney and Counsellor at Law, Bond Building, Washington, D. C.

291 [Endorsed:] File No. 20,800. Supreme Court U. S. October Term, 1908. Term No. 137. Buenaventura Ubarri e Yramategui, Plff. in Error, *vs.* Jacinto Lorenzo Lopez Laborde *et. al.* Stipulation that testimony of Francisco P. Acuna and Joaquin Matienzo as it appears in transcript be omitted and that testimony attached to stipulation be printed in lieu thereof. Filed Jany 2d, 1909.

292 In the Supreme Court of the United States.

Case Number 137.

BUENAVENTURA UBARRI YRAMATEGUI, Plaintiff in Error,
versus
JACINTO LORENZO LOPEZ LABORDE ET AL., Defendants in Error.

It is here by stipulated by and between the attorneys for the parties in the above entitled case that the certificate issued by the Clerk of the District Court of the United States for the District of Porto Rico, which is attached hereto, and sets forth an opinion of the Honorable Judge Rodey, Judge of said Court, holding that Rufino Ubarri is a citizen of Porto Rico, and dismissing as to him the action brought

by Jacinto Lorenzo Lopez Laborde *et al*, be incorporated in the record of this appeal and be made a part thereof.

San Juan, Porto Rico, December 21, 1908.

WILLIS SWEET,
Attorney for Defendants.

WALTER D. DAVIDGE,
HILARIO CUEVILLAS HERNANDES,
Attorneys for Plaintiff.

293 In the District Court of the United States for Porto Rico.

No. 386. At Law.

JACINTO LORENZO LOPEZ LABORDE, MARIA CONSOLACION LOPEZ LABORDE, MANUEL DEMETRI LOPEZ LABORDE, ENRIQUE LOPEZ LABORDE, and MARIA CONCEPCION GRANIANA LOPEZ, by Her Grandmother, CONCEPCION LABORDE, Plaintiffs,

vs.

FRANCISCA LUISA LOPEZ LABORDE, PABLO UBARRI YRAMATEGUI, RUFINO UBARRI YRAMATEGUI, JOSE MARIA UBARRI YRAMATEGUI, VENTURA UBARRI YRAMATEGUI, MODESTA UBARRI YRAMATEGUI, as the Successors of PABLO UBARRI, Deceased, Defendants.

No. 407. In Equity.

JOSÉ MARIA UBARRI É YRAMATEGUI, Complainant,

vs.

PABLO UBARRI É YRAMATEGUI ET AL., Defendants.

Opinion Finding Rufino Ubarri to be a Porto Rican, and Sustaining His Motion to Dismiss for Want of Diverse Citizenship.

These two suits involve the same contention, and, by consent of counsel for both parties, are considered together. The question is raised by a verified motion made in each case, in behalf of defendant and respondent, Rufino Ubarri Yramategui, to dismiss the declaration in the suit at law and the bill in the suit in equity for want of jurisdiction. Said defendant and respondent alleges that he is a Porto Rican and that all of the plaintiffs and complainants
294 being also Porto Ricans, the cases come within the exclusion rule laid down in the Vallecillo-Bertran case heretofore decided by this court.

The unfortunate wording of section 3 of the Act of Congress, 31 Stats. 953, approved March 2, 1901, amending the Foraker Act, which declares that the jurisdiction of this court shall: * * * "extend to and embrace controversies *where the parties or either* of them are citizens of the United States or citizens or subjects of a foreign State or States." * * * is causing this Court a lot of trouble and annoyance. The neglect of the recent Congress to amend this Act, as requested by the bar of the Island, but adds to

the difficulty. Hardly a case can arise but what Porto Ricans will be found to be necessary parties on both sides, and hence usually the jurisdiction is found to be in the local courts, which all counsel contend, whether with or without reason, afford no proper equitable remedy in such cases. This condition of things results in an almost continuous effort to dispense with all save absolutely necessary parties, so as to cure jurisdictional requirements, and the effort to claim or disclaim Spanish or Porto Rican citizenship, either to assert equitable rights, or avoid liability, is continuous, embarrassing and annoying. However, until Congress sees fit to act in the premises, We must consider the question referred to, as *stare decisis;* our decision of the matter was made advisedly after full hearing, and we see no reason to change it. Courts do not make law, (or at least ought not); their duty is to administer it as they find it to be.

We have also heretofore ruled in another branch of one of these same cases, that this court is not vested in plain proceedings *in rem*, with power to acquire jurisdiction by means of substitute
295 service based upon what is known as a "foreign attachment." In the decision making this holding, we took occasion to set forth the necessity for additional legislation in that regard. It transpires, as we then stated, that after the American occupation of this Island, many Spaniards, who, as it is said, through influence or by direct frauds and otherwise, had done great wrongs to people on the Island, immediately left for Spain and have ever since continued to reside there without any power existing in this court to bring them to account for their fraudulent doings while here, although they are possessed in many cases of large amounts of property in the Island, from which they are continually receiving revenue. These conditions, in a manner, excuse the efforts that are being made, as above stated, to right these wrongs, and certainly are sufficient reason in themselves as an argument for additional legislation by Congress.

While considering this matter, it may not be amiss to call attention to the fact that it is probably no part of our duty to resolve doubts in favor of our jurisdiction. As the court is of limited jurisdiction, the contrary should be the rule. Neither do we think that this tribunal was instituted to afford expectant litigants an easy mode of uprooting proceedings, decisions and titles that were settled long years ago, under Spanish sovereignty, through what was then *prima facie* at least, due process of law, in the Spanish courts, or that it ought, without the fullest showing and the gravest reasons, attempt to do so. On this subject it may be well to hark back to a warning statement made by the Supreme Court of the United States
in 1898, in the Cessna case, 169 U. S. 165, where an effort
296 was made to induce the courts of the United States to correct a wrong claimed to have been done previous to the treaty of cession between the countries, by the Mexican government regarding lands now situated within the boundaries of the United States. Mr. Justice Brown in that opinion used this language:

"It is the duty of a nation receiving a cession of territory to respect all rights of property as those rights were recognized by the

nation making the cession, but it is no part of its duty to right the wrongs which the grantor nation may have theretofore committed upon every individual. There may be an exception when the dispossession and wrong of the grantor nation were so recently before the cession that the individual may not have had time to appeal to the courts or authorities of that nation for redress. In such a case perhaps the duty will rest upon the grantee nation, but such possible exception has no application to the present case and in no manner abridges the general rule that among the burdens assumed by the nation receiving the cession is not the obligation to right wrongs which have for many years theretofore been persisted in by the grantor nation." * * *

While this language of the Supreme Court was used with reference to wrongs of the former government against its own then citizens, we think it is equally applicable to all stale demands which were settled by the courts of the former sovereignty and in which plenty of time had elapsed before the change, in which the injured parties could have made an effort to obtain relief. In our opinion, neither international law, the comity of sovereign States, nor the treaty between this country and Spain, requires or even contemplates that the new sovereign shall expend money or the time of its courts in such work, save in the exceptional instances pointed out by the Supreme Court *supra*, and perhaps some few others, in which exist such surrounding facts and circumstances as to call for such intervention.

297 In one of these cases now being considered, an examination of the files shows that it arose out of an alleged defrauding of an estate which one Jacinto Lopez y Martinez left in the year 1884, fifteen years before the change of sovereignty! The chief wrong doer, according to the allegations of the declaration, was one Pablo Ubarri y Capetillo, the father of this present defendant and mover, who it seems was a very influential and powerful person of title here at the times, and who, if the allegations of the bill are true, procured the widow of the deceased to make him manager of the whole vast estate, said to have been worth about a quarter of a million dollars. He proceeded by his agents to divide it in the proper surrogate and probate courts, or at least the courts which had such jurisdiction here at the time, and it seems, because the widow, who was presumably an independent person and of full age, refused to pay a large claim of his against the estate, brought a suit against her and all the infant heirs for the collection of it, and supplemented it by an attachment. He then, as it is said, for several years neglected the payment of the taxes, and had the different municipalities in which the land of the estate was situated, distrain for it, then had the land undervalued through his own minions, and on the sale bought it in, either himself directly or through his agents, until finally in 1889 he became possessed, for a trifling sum, of practically the entire estate, and in the meantime had the widow incarcerated under a prosecution for cutting some wood on one of the estates, and secured the affirmance of the imprisonment by a higher court after

a lower court released her. From which imprisonment she
298 was only at last released by a royal order from Spain. The whole transaction appears to have been a most outrageous fraud and crime, if the complaint is true, yet this adult woman stood by and took no steps to prevent it before the Spanish courts, or if she did and failed she is simply now asking the courts of a new government for a new trial! It must be remembered that all of this occurred nine or ten years before Gen. Miles landed at Guanica. As an excuse for the delay, it was stated on one of the hearings that this man Pablo Ubarri y Capetillo had such influence, that he was enabled to dominate the action of the government and of the courts, and that it would have been a useless task for this lone widow to attack him. The equity suit being considered here is by one of this man's sons against this defendant and mover and another brother, alleging that after the death of their mother, others of the heirs, including this respondent, conspired with their said father and cheated and defrauded complainant and the other heirs out of a large amount of the estate,—which consisted presumably to some considerable extent, of the ill gotten community gains made out of the Jacinto Lopez estate, as set out in the suit at law. The father died in 1894, and of course having borne a title, and having been such an influential citizen, his sons and family were naturally close adherents of the Spanish government, and it appears that the mover here, Rufino Ubarri, was a Spanish volunteer who took part in defending the country against the American troops in the late war, and that immediately after the war most of the family moved to Spain. Of course we do not know what the truth of all these allegations as to the fraudulent conduct of this father and his sons may be, and we make the statement only to show the sort of allegations that have been, and are continuing to be made in complaints and bills before this court at the present time, and for the pur-
299 pose of showing some of the ulterior facts, and large amount involved in this bitter contest, for that is what it has developed into.

The question for determination is: On the facts and the law here to be stated, is Rufino Ubarri a Porto Rican or a Spanish subject? If he is a Porto Rican, as he claims to be, we have no jurisdiction in either of these cases; if he is a Spaniard, as the other side allege him to be, then his motion must be overruled and he be required to further plead, answer or demur.

The suit at law was filed June 6, 1906; the defendant Rufino Ubarri thereafter, on June 16th, stipulated with the other side for additional time in which to plead. On June 30th, he demurred on the ground that the action was prescribed under several different local statutes which he cited. On September 17th, he again stipulated, extending the time within which to answer. Again, on November 3rd, he stipulated, extending the time to plead, and repeated it on November 30th, and then on December 27th he filed this motion to dismiss, alleging for the first time his Porto Rican status or citizenship. About the same course of stipulating for time, etc., took place, so far as he is concerned, in the equity suit.

the bill in which was filed August 29, 1906. During the time of this dilatory action, the effect of the ruling in the Vallecillo *v.* Bertran case became known, and was taken advantage of by others in these same suits.

In his motion he alleges that he was born in the Island of Porto Rico in 1861, and now resides here, and, that he has always lived here, with the exception of the time he went to Spain to be educated and divers visits he made to that country since; that
300 desiring and intending to be and remain a citizen of Porto Rico after the American occupation and after the signing of the treaty of peace between Spain and the United States of America, he refrained from making before a court of record or before any other tribunal or consulate within a year from the date of the exchange of ratifications of the treaty of peace, as provided therein, a declaration of his intention to preserve his allegiance to the Crown of Spain. And that in default of such action he has renounced his allegiance and adopted the nationality of the territory of Porto Rico in which he resides, and became, and is under the said treaty and the laws of the United States, a citizen of Porto Rico. To all of which he makes oath. He was required to support this motion by other proof, and on January 4th of the present year, counsel for both sides in both suits being present in open court, a full hearing on the matter was had. A considerable amount of oral evidence was taken in the premises, all of which was afterwards written out by the stenographer and has been carefully reread before proceeding with the writing of this opinion.

Before stating or discussing the acts and doings of this defendant, which it is claimed make him, or rather keep him a Spanish subject, we will proceed to consider the law on the subject.

The treaty of Paris was signed on December 10, 1898; the ratifications thereof were exchanged at Washington on April 11, 1899. Article IX of the treaty is applicable and, among other things, provides that:

"Spanish subjects, natives of the Peninsula, residing in the territory over which Spain by the present treaty relinquishes
301 or cedes her sovereignty, may remain in such territory or may remove therefrom, retaining in either event all their rights of property, including the right to sell or dispose of such property or of its proceeds; * * * In case they remain in the territory they may preserve their allegiance to the Crown of Spain by making, before a court of record, within a year from the date of the exchange of ratifications of this treaty, a declaration of their decision to preserve such allegiance; in default of which declaration they shall be held to have renounced it and to have adopted the nationality of the territory in which they may reside."

Section 7 of the Organic Act (the Foraker Act establishing civil government in Porto Rico, approved April 12, 1900, 31 Stats. 77) provides

"That all inhabitants continuing to reside therein (in Porto Rico) who were Spanish subjects on the eleventh day of April, eighteen hundred and ninety-nine, and then resided in Porto Rico, and their

children born subsequent thereto, shall be deemed and held to be citizens of Porto Rico, and as such entitled to the protection of the United States, except such as have elected to preserve their allegiance to the Crown of Spain on or before the eleventh day of April, nineteen hundred, in accordance with the provisions of the treaty of peace between the United States and Spain entered into on the eleventh day of April, eighteen hundred and ninety-nine" * * *

Counsel for the mover strenuously contends that in view of the provisions of the treaty thus set out, he cannot understand how an argument can be made in opposition to the motion; that according to the treaty, the right of preserving Spanish citizenship or nationality was given *only to* "Spanish subjects *natives of the Peninsula*," that Rufino Ubarri is not a "native of the Peninsula," and was more than twenty-one years of age on April 11, 1899, and that therefore he could not have elected to preserve his Spanish nationality in accordance with the above quoted portion of Art. IX of the treaty, even though he had desired so to do. He further contends that under the language of the Organic Act aforesaid, the mover, Rufino Ubarri, was an inhabitant of Porto Rico and continued to reside therein, and is still a resident thereof.

302 There probably could not be much dispute as to this contention, were it not for the fact that Rufino Ubarri was not in Porto Rico on the day of the ratification of the treaty. It developed at the hearing that on March 8, 1899, about three months after the signing of the treaty and one month and three days before the ratification of it, this defendant took his family and went to Spain, remaining there about six months and returning to Porto Rico in the fall (October 22nd) of that year, and again going back with his family to Spain on June 18th of the following year, A. D. 1900, remaining there this second time something like two years. He left his furniture stored at his father-in-law's here at the time and took only a small amount of expense money with him, having more remitted to him from time to time. He purchased no return tickets on either trip, although the evidence shows he might have saved twenty-five per centum of his passage money on the two and a half tickets he had to buy in each instance for himself, his wife and two children, and such tickets would have been good for a year and could have been extended for a longer period. This point, coupled with his high connections and natural Spanish tendencies, is made much of by counsel for complainants as showing his intention to cast his lot with Spain after the war.

Respondent himself testified in his own behalf at the hearing. The Court saw him and heard him testify, and at times took him in hand with a view to getting some information from him. He appears to be a sort of nervous, somewhat hypochondriacal individual, of a not very complacent or high order of intellect. In fact,

303 his counsel during the examination, with reference to him, stated: "The witness is not very bright, although I am not willing to say that he is not entitled to all credibility as a witness." He testified, among other things, that he was a member of the guerrillas, meaning, as it is claimed, that he had been a member of the

Spanish volunteer forces here in the Island of Porto Rico who fought against the American troops. He further testified that when he took this trip to Spain some three months after the signing of the treaty of peace, he went purely on a pleasure trip, and incidentally for the benefit of the health of one of his children. The delicate health of this child was fully shown by the evidence of a physician on the hearing. And that, inasmuch as he has property interests here in Porto Rico, and none elsewhere, he could not reside in Spain all the time if he wanted to. When first asked what his intention since the war between the United States and Spain has been with respect to his own citizenship, he answered: "That I cannot tell you; that I reserve to myself; that I will keep to myself." He testified further that he had a poor memory and therefore he had forgotton to tell about coming back from Spain a few months after he went there the first time, which fact was only brought out by the evidence of other witnesses. During the examination, his counsel had to warn him that, "This is a serious matter," and that he must not give any kind of an answer, but before he answers must know what he is answering. In answering to the Court as to how long he stayed in Spain on those two trips, he said: "I might have stayed two or three years, but always with the idea of coming back, with the
304 intention of returning to Porto Rico. You know that the property has great demand upon people, and, as they say, the attention of the master fattens the horse." It developed in the evidence that he took out what is called a *cedula personal* while he was in Spain, but he claimed that the only effect of this was to enable him to get a passport and come back to Porto Rico whenever he wanted to, and that it in no manner indicated any desire on his part to remain a Spanish citizen; that he got it for himself alone, and not for his wife and children. He stated positively in answer to his counsel as to whether it was his desire to remain a Spaniard: "No, sir; neither is it my wish or desire to do so, nor will I ever serve in their army again," or words to that effect.

In the course of the hearing there was introduced a certificate from the Spanish consul of San Juan, dated the 17th day of December, 1906, to the effect that the books or registry of Spanish subjects in his office do not show that defendant Rufino Ubarri is inscribed therein as such. It is pointed out that respondent Ubarri was here in Porto Rico from October 22, 1899, to April 11, 1900, a period of nearly six months of the year from April 11, 1899, to April 11, 1900, during which the option given in the treaty was running to permit persons to elect to remain Spanish subjects, and during which time he could have so inscribed himself as a Spanish subject in the consulate had he desired to. Counsel for the other side objected to this, because, they claim under the treaty it must have been made before a court of record, to which counsel for
304½ mover replies that the Spanish text of the treaty, which is of equal binding force with the English text, uses the phrase, "oficina de registro" instead of "court of record," and claimed therefore that a registry in a consulate would be sufficient under the treaty.

A mass of evidence was introduced attempting to show what Rufino Ubarri did and said previous to leaving on these trips for Spain. We have examined all of it carefully, and can say that most of it is immaterial, and hearsay and opinions. There is nothing in any of it that would induce anybody to believe that the mover had really declared his intention before going to Spain, to remain there permanently and retain his Spanish citizenship. He has testified himself that he never declared his intention before any court or at any consulate, or before any other official whatever, to retain such Spanish citizenship. When recalled toward the end of the hearing, he testified again: "My intention has been, and still is to be an American citizen, a citizen of the United States, because if, in the near future I should get the idea of going back to Spain I want to be considered an American citizen because I am looked at under a better light as a foreigner than as a Spaniard." He further testified that he wants his children to be American citizens and that he sent them to the United States to school for two years in order to learn the language; that both he, his wife and his children are native Porto Ricans, and their tendency is to live in their native land. He was very positive about all this and states that it has been his intention to remain a Porto Rican and to become an American citizen, if he can, ever since 1898 when the war ceased.

305 There is a dispute between the respective counsel as to the effect of these *cedulas personales*. Counsel for the mover claimed that they are given to visitors temporarily in Spain for identification, tax, contract, and permission to sue purposes, and cites law in support of this view, while counsel for complainants claimed that they are given to no person not domiciled in, and a citizen of Spain, and also cites Spanish law which he claims, supports this contention. The citations given us from vols. 4, 5 and 6 Alcubilla leads us to adopt the view that these cedulas do not necessarily imply citizenship, and that is what is material here.

It is in evidence that all this Ubarri family, except the mover here and José Maria, another brother, are now living in Spain. Several of the witnesses stated that this man Rufino Ubarri, during the transition period here on the island, talked as a Spaniard and acted as one, and that it was natural for him to do so, being the son of a titled Spanish father. It is also in evidence that the mover has served on juries in the local courts here in Porto Rico within the last two or three years.

We are unable to do so and it is useless for us to try to reason it away, because it appears to be, and without doubt is good law, that under the treaty of Paris, any plaintiff in this court who alleges that an adult native Porto Rican, no matter what his parentage may be, is now still a Spaniard, has the whole burden on him to show that fact. The presumption under the treaty and the law is that he is a citizen of Porto Rico. The then Attorney General of the United States, Hon. P. C. Knox, now United States Senator from Pennsylvania, held, on May 13, 1902, 24 Opinions Attorneys General, page 10, as per the syllabus, that:

"A native Porto Rican, an artist by profession, although tem-

porarily living in France on the 11th day of April, 1899,
306 is, under section 7 of the Act of April 12, 1900, a citizen of Porto Rico, and, as such is an American artist whose paintings upon importation into the United States are entitled to the privileges provided in paragraph 703 of the tariff act of July 24, 1897," etc.

Mr. Knox further states with reference to this artist, a Mr. Molinas, "that even though he could be held to be omitted from section 7 of the Organic Act, he is undoubtedly one of those persons turned over to the United States by article 9 of the treaty to belong to our nationality. He is also clearly a Porto Rican; that is to say, a permanent inhabitant of that island, which was turned over by Spain to the United States." This language of the Attorney General is quoted with evident approval by the Supreme Court of the United States in Gonzales *v.* Williams, 192 U. S. 15, where it was sought to subject a Porto Rican citizen to the restrictions of the immigration laws against aliens.

Gov. Magoon in his work, "The Law of Civil Government under Military Occupation," pages 175-6, comments at length on this article IX of the treaty, and after stating that such instruments usually contain stipulations intended to protect the civil and political rights of the inhabitants in the ceded country, says that Spain did not insist on such provisions in the treaty of Paris, but trusted to the justice and generosity of the sovereign people of the United States, and hence the provision that the civil rights and political status of the native inhabitants, etc., should be determined by Congress was inserted therein. Then he continues:

"The United States recognized the right of said inhabitants to continue in allegiance to the Crown of Spain or to confer
307 their permanent allegiance upon the United States. It therefore became necessary to adopt *a test or rule of evidence* where might be ascertained which course the individual inhabitants had elected to pursue. Hence the provisions of Article IX of the treaty: "In case they remain in the territory they may preserve their allegiance to the Crown of Spain by making, before a court of record, within a year from the date of the exchange of ratifications of this treaty, a declaration of their decision to preserve such allegiance; in default of which declaration they shall be held to have renounced it and to have adopted the nationality of the territory in which they may reside." This provision of the treaty simply declares the ordinary rule that allegiance is presumed from the fact of residence in the country and participation in the protection and other benefits of organized government."

Then he quotes, in further support of his view, at length from Halleck on International Law.

We do not think that the provisions of the royal decree of Spain of May 11, 1901, providing how Spanish citizens who lost their citizenship under the treaty of Paris, might recover it in Spain, has any bearing on the case we are considering here, because in the first place if it conflicts with the treaty in any way, it would not be binding on the government of the United States. Magoon, p. 183,

And further, article 2 of that decree, which is the only one that can fairly be said to be applicable, provides that:

"Natives of the territory ceded or relinquished, who at the date of the exchange of ratifications of the treaty, of the 10th of December, 1898, as aforesaid, were residing outside of the country of their birth, and who at the time of the promulgation of this decree, are found to be inscribed in the registries of the legations or consulates of Spain abroad, or who were holding public office under the Spanish administration, or who were domiciled within the actual dominions of Spain, shall be held to have retained their Spanish citizenship, unless within the period of a year from this date they shall make an express declaration to the contrary before the proper authorities."

As stated, we do not think this article conflicts with the phrase in article IX of the treaty, "Spanish subjects natives of the Peninsula," but if it does, it would be null and void as to this mover. Magoon supra; also Moore's Int. Law Dig. Vol. 3, p. 327. This latter
308 work, same volume, p. 508, states:

"To hold that the mere residence of an individual in a foreign country was conclusive evidence of his desire and intention to become one of its citizens would, declared Mr. Blaine, involve an assumption of a most violent character."

We fully appreciate the position this mover was in when he went to Spain before the ratification of the treaty. Nobody knew the treaty would be ratified so soon, but all expected it any day. After it was ratified, every Porto Rican of importance knew its terms. The military commander of the Island issued a general order explaining how those entitled to preserve their Spanish allegiance, could do so. This mover came back to Porto Rico and remained here six months, during all of which time he might have preserved his Spanish citizenship and he knew during all this time that if he did not do so, he would be presumed to be a Porto Rican. He was here with his entire family during those six months.

For the purposes of this motion, as we view the law, it is immaterial whether this man is in his heart loyal to the American flag. He swears that he is loyal to his native land, Porto Rico, and that he wants to become an American citizen, and we think he has a right under the treaty and under the Organic Act to be a Porto Rican owing allegiance to the United States. If he is a Porto Rican, of course his motion must be sustained here. We have nothing to do with his inner feelings. That is matter for another department or another proceeding. The treaty of Paris no doubt did not instantly make patriotic Americans out of every native Porto Rican it brought under the flag, but it did, we think, make them adopt "the nationality of the territory in which they reside."

We are inclined to think that this mover having been born here in Porto Rico and not being, "a native of the Peninsula," could not remain a Spanish subject if he wanted to, even by register-
309 ing himself as provided in the treaty, at least up to the time of the passage of the organic act. If it can be held that section 7 of the organic act contemplated the ratification of the election of individuals, native Porto Ricans, to remain Spaniards, if such

election was made within the year next after the ratification of the treaty, then that is answered by the fact that this mover did not make any such election, although he was here for fully six months of that year, and he comes here in open court and testifies under oath that it has never been his intention to abandon his Porto Rican citizenship. If he really went to Spain in good faith for pleasure and for the benefit of his child's health, it was under the circumstances the most natural place for him to go where everybody spoke his mother tongue. If he had gone to England, France, Italy or any other country, no one would claim that such fact made him cease to be a Porto Rican, or made him a citizen of such other country. The burden is entirely upon plaintiffs here to show by a preponderance of the evidence that he is not a Porto Rican, and they cannot, in the face of the treaty and statute, ask the Court for mere jurisdictional purposes to hold him to be a Spaniard, without making such showing to the Court. He is a Porto Rican as the law presumes he is, until the contrary is conclusively shown. What his neighbors may testify about his intention or what opinion they may give as to their beliefs, is not binding on him, and anyway, none of them did so testify in any manner that could be received, as we heard it. He was in a peculiar situation. He was the son of a titled Spaniard. He fought for his country until it was conquered. Naturally everybody would believe his sym-
310 pathies to be with Spain, and if, as he swears, he made up his mind after it was all over, to accept the inevitable, he has a right to have his oath, in connection with the law, considered in that regard. It makes no difference about his Spanish connections or the status of the rest of his relatives. Their cases are not now being considered. They are not here in person claiming to be Porto Ricans. Many good American citizens in all the States have near relatives in their fatherland. The circumstances surrounding the conquest of Porto Rico were peculiar. This man never moved any of his means to Spain, never made any investments there, never owned a residence there, and is now, as he always has been, a resident in Porto Rico, claiming to be a citizen thereof.

We give due weight to the fact that his counsel did not immediately plead that he was a Porto Rican on the filing of these suits against him, and probably did not do so because his client did not authorize it, or was not yet ready to speak on the subject, but now that he has spoken and spoken positively, and under oath, and he being a resident here in Porto Rico and all his property and interests being here, as well as his family, and all being natives to the manor born of the Island, due weight must be given to such fact. We do not consider it profitable to review the many domestic and Spanish citations in the briefs of counsel on both sides as to domicil and residence. Neither one would necessarily imply citizenship; 3 Moore's Int. Law Dig., p. 274, and further, because there is little room for dispute under the authorities on those subjects, the main question being always one of intent, the law fixes nationality, and this defendant had a right on and after April 11, 1899, wherever he

was, to decide and elect as to this matter. We do not think
311 that it has been proved by any proper evidence, much less by a preponderance of the evidence, that he ever in fact permanently changed his domicile. The declaration of the party himself has great weight in the matter of domicil, as instance the case of the patriot Kosciusko. "* * * his domicil of origin was in Poland, and the presumption of law was that it was retained unless a change is proved, and the burden of proving it is upon him who alleges the change."

Somerville *v.* Somerville, 5 Vesey 787.

3 Moore's Int. Law Dig. 814.

It is difficult to lay down any general rule as to what residence constitutes domicil. There must be an actual residence in the place with the intention that it is to be a principal and permanent residence. * * * the intention of the party may be gathered from the seat of his fortune, his family, and pursuits in life. A removal from the former domicil for an indefinite and uncertain time is not a change of it. * * *

Ibid (Moore).

This defendant's legal rights are superior to the mere inclination or desire of the Court or counsel to keep him in court by resolving the doubts, if there are any, against him. It is a serious thing for a court, under circumstances like these, to force a man to belong to a country that has ceded both him and the land of his birth away, and which citizenship he swears he neither claims or desires. On the facts here we have no power to do so. If he is sincere in his claim, and the burden is on the other side to show the contrary, it would simply be a judicial outrage. The remedy is with Congress to enable this Court to dispossess him of property he may have acquired through the wrong of his father, if such is the
312 fact, which it is intimated, in truth and justice, belongs to other citizens of this Island; but on the merits of that, we express no opinion. When Congress created this court, it limited its jurisdiction and presumed that the local courts had jurisdiction that would be ample, concurrent or exclusive the same as in the States. It is regrettable if the local courts, as it is said, afford no proper remedy in such a case, but we cannot expatriate this man to please litigants.

It may be, and probably is, true that this mov[illegible]id not make up his mind as to the matter of his citizenship at th[illegible]me he first left Porto Rico with his family on March 8, 1899. As matter of law, he did not have to do so at that time. The treaty had not yet been ratified. He had until the 11th day of April, 1900, more than a year thereafter, in which to do so. He came here to Porto Rico on October 22, 1899, and remained until June 18th of the year following, any day of which time up to April 11th he might have declared his intention to remain a Spaniard, yet, with full knowledge of the consequences, he did not do so. The privilege of being a mere Porto Rican, owing allegiance to, without being a citizen of the United

States, is not one that the Court can be induced, just to meet mere exigencies in any case, to deprive him of.

The motion in each case therefore will be sustained, and the complaint in No. 386 dismissed at once as to this defendant only, and unless the bill in No. 407 can be, and is amended within five days so as to give this court jurisdiction, it will stand dismissed with costs, and it is so ordered.

B. S. RODEY, *Judge.*

4-2-07.

313 UNITED STATES OF AMERICA,
District of Porto Rico:

I, John L. Gay, Clerk of the District Court of the United States for Porto Rico, do hereby certify the foregoing to be a true copy of the opinion on file in my office handed down under date of April 2, 1907, in the case of Jacinto Lopez Laborde *et al. vs.* Buenaventura Ubarri, No. 386.

In witness whereof I place my official signature and affix the seal of the Court at San Juan, P. R., this 17th day of December, A. D. 1908.

[Seal United States District Court for the District of Porto Rico.]

JOHN L. GAY, *Clerk.*

314 [Endorsed:] File No. 20,800. Supreme Court U. S. October Term, 1908. Term No. 137. Buenaventura Ubarri é Yramategui, Pl'ff in Error, *vs.* Jacinto Lorenzo Lopez Laborde *et al.* Stipulation of counsel and addition to record. Filed Jany. 2d, 1909.

Endorsed on cover: File No. 20,800. Porto Rico, D. C. U. S. Term No. 137. Buenaventura Ubarri y Yramategui, plaintiff in error, *vs.* Jacinto Lorenzo Lopez Laborde, Maria Consolacion Lopez Laborde, Manuel Demetrio Lopez Laborde *et al.* Filed July 16th, 1907. File No. 20,800.

In the Supreme Court of the United States, October Term, 1908.

No. 137.

BUENAVENTURA UBARRI Y YRAMATEGUI, Plaintiff in Error,
vs.
JACINTO LOPEZ LABORDE ET AL., Defendants in Error.

It is hereby this 30th day of March, 1909, stipulated and agreed by and between the parties hereto, by their respective attorneys, that the reference on page 118 of the printed record, page 207 of the original transcript, in the note as to the deposition of Joaquin Matienzo, referring to the identification of three documents executed by Pablo Ubarri Capetillo as appearing on page 58 of the Transcript of Testimony are the same documents that appear on page 122 of the printed record; and that the other document, printed on page 122 of the record, was also identified, offered in evidence and read to the jury.

And further that the pages of the original transcript numbered 69 to 71, referred to on said page 118, refer to what is contained on the printed page 122 of this record;

And further that on the same page 118 of the printed record the reference to pages 72 to 84, as to the fact that plaintiffs offered in evidence and read to the jury certain documents purporting and appearing at said pages 72 to 84, those said documents appear in the printed record at pages 123 to the middle of page 130 inclusive;

And further that the hereunto annexed certified copy of the depositions of Robert H. Todd and Ramon Falcon shall be printed and received as a part of the record in lieu of the abbreviated or narrative form of the depositions of said witnesses as the same appear on pages 131 and 132 of the printed record.

WALTER D. DAVIDGE,
Attorney for Plaintiffs in Error.
WILLIS SWEET AND
GEORGE H. LAMAR,
Attorneys for Defendants in Error.

In the District Court of the United States for Porto Rico.

Law. No. 386.

SUCCESSION OF JACINTO LOPEZ
vs.
BUENAVENTURA UBARRI.

Transcript of the Testimony of the Witnesses Robert H. Todd and Ramon Falcon.

ROBERT H. TODD, called as a witness in behalf of plaintiffs, after being duly sworn, testified as follows:

Direct examination by Mr. SWEET:

Q. What is your age, residence and occupation, Mr. Todd?

A. My age is forty-four; my residence is San Juan and my occupation is attorney at law.

Q. Where did you live during the years 1885, '86 and '87, along there?

A. Here in San Juan.

Q. What was your occupation?

A. I was an employé in the provincial deputation.

Q. How long were you connected with that institution?

A. From 1879 to 1887.

Q. What was the relation of that institution, if you know, to the municipalities of the Island of Porto Rico?

A. The 'Diputacion' as it was called in Spanish, was the last resort, sort of supervising authority over all the municipalities and had control of their budgets, of taxation and everything pertaining to the municipalities.

Q. How long did you say you were connected with the institution?

A. Eight years.

Q. In the matter of enforcing the collection of taxes in any community, might this 'Diputacion' exercise any authority or power?

A. It saw to it that the municipalities themselves should collect taxes, and not only municipal taxes but provincial taxes, insular taxes, and it was also sort of an administrative appeal body for any taxpayer who felt aggrieved on account of high taxation, etc.

Q. Give us just a brief statement, just a paragraph of how it was organized and of what it was composed.

A. The 'Diputacion' you mean?

Q. Yes.

A. That body was composed, I think, of sixteen members elected at large from all the Island. They would meet twice a year in ordinary session. It had a presiding officer called a President, and a Vice-President and Secretary who had no vote. He was just an employé, and of course all the necessary help in the office. During all the time between sessions of that body it had by law a standing committee called a permanent committee appointed by the Governor.

Q. Outside of this body?

A. Within its own body, but of members living in San Juan. That was composed of three members. The presiding officer of that committee was the Vice-President of the 'Diputacion;' and the other two members were appointed by the Governor. This committee would transact all business coming before it in the absence of the 'Diputacion' itself.

Q. Did it exercise all the powers of the 'Diputacion' too?

A. Entirely.

Q. Subject to approval by the 'Diputacion?'

A. Subject to approval, yes.

Q. Now, do you know who the officers were during the years I have stated, 1884, '85, '86 and '87, along there: I mean this committee, the Vice-President and the other two members.

A. I could not tell you exactly who all the members were, but I could say that during the eight years I was connected with that body as a clerk, Mr. Pablo Ubarri was the Vice-President of the 'Diputacion,' and as such, President of this standing committee.

Q. All the time?

A. All the time.

Q. What was the relation of Mr. Ubarri as to his power and influence, not only as Vice-President of this 'Diputacion' and President of this committee, but generally in the community, politically and financially?

A. Financially, he was considered the richest man in Porto Rico and politically he was the man with most power. He was considered even with more power than Captain Generals, so much so that he was supposed to influence the home government in the appointment of Captain Generals, and he was also the President of the Conservative Party, meaning the Spanish Party, here, who had entire control of the politics of the Island at least during the years 1879 to 1887 of which I speak.

Mr. SWEET: Take the witness.

Mr. HAWKINS: No Cross Examination.

Witness retires.

RAMON FALCON, called as a witness in behalf of plaintiffs, after being duly sworn, testified as follows:

Direct examination by Mr. SWEET:

Q. What is your name, age and occupation?

A. Ramon Falcon: forty-four years of age and lawyer by profession.

Q. Reside in San Juan?

A. In San Juan; yes, sir.

Q. How long have you resided here, Mr. Falcon?

A. Since I was born.

Q. How long have you been practicing law here?

A. Five years.

Q. Were you acquainted in his lifetime with Mr. Pablo Ubarri?

A. Yes, sir: I knew him well.

Q. Were you acquainted with his standing financially and with

his reputation and influence as a political leader and a dominator of men?

A. Yes, sir.

Q. Please state what the facts are in relation to that.

A. With regard to what points? I would like to have a more specific inquiry.

Q. To what extent did he control municipal organization, the appointment of judges and public officials and the movement of the political party of which he was the head?

A. Mr. Pablo Ubarri, I think, at that time had more influence in Porto Rico than even Mr. Roosevelt has now in the United States. Mr. Ubarri was a man of such influence that when he desired to remove a Governor or to have a Governor removed, he did so, and it was easy for him to exercise that power with regard to the removal of a judge or mayor. He was the leader of a political party which had the greatest amount of influence in Porto Rico. Persons who belonged to that party were so afraid of him that they did not dare to oppose his influence, to disagree with him, although he privately was a very good man; personally he was a good man.

Q. Was he a man who hesitated in the exercise of power?

A. Yes, sir; a great deal. He knew a great deal more than the public thought he did.

Mr. SWEET: You didn't understand my question.

The COURT: What counsel means is, would he stop in the exercise of his great power?

A. No, sir; because he also was sure of whatever he desired or wanted to do.

Q. What was his standing financially in the community?

A. Economically he was a man who had a good position. He had a large capital, perhaps the wealthiest man of the community?

The COURT:

Q. What was his business? What was he engaged in?

A. He had any amount of business; all sorts of business. It is said that his main business was that of the vice-presidency of the 'Diputacion Provincial.'

Mr. HAWKINS: I move to strike that out.

The COURT: It is first class evidence if it is good at all.

Cross-examination by Mr. HAWKINS:

Q. Only one question, Mr. Falcon. How do you know all this?

A. Because for twenty-two or more years I have been in public life, in business. For more than twenty years I have been actively engaged in politics. During the Spanish regime or administration, I filled some offices here.

Q. Do you know of any specific instance of the exercise of such power as you have testified to?

A. I can give you a number of them. I have been 'escribaner' and I have seen an honest judge decide a suit against him and seventy-two hours afterwards being removed. I have also seen——

Q. Just one moment. How do you know that Pablo Ubarri had anything to do with his removal?

A. Because the press and the public at large commented on that act.

Q. Then it was matter of public comment and not your own personal knowledge?

A. No, sir; I also have my own knowledge about it. I went to him to report that judgment against him, and he said to me: That judge shall not make any other decision. He said that to me personally. And it was true; he never gave any other judgment.

Q. I want you to answer yes or no whether you know whether Pablo Ubarri actually removed that judge; not what he said to you; whether you know of your own personal knowledge that he removed him.

The COURT: Not because of his threat or boast, but as a matter of fact.

A. That was a matter which was publicly known.

Q. All right then, it is not your personal knowledge.

A. I could not see or bring before me the private correspondence of Mr. Ubarri.

Mr. HAWKINS: That is all.

Redirect examination by Mr. SWEET:

Q. Do you know who was Mr. Ubarri's leading counsel or lawyer?

A. His lawyer was Don Francisco de P. Acuña and his engineer was Don Tulio Larrinaga who is now Commissioner to Washington. He was his engineer who built this road to Rio Piedras and he was also the engineer of the 'Diputacion Provincial.'

Q. He did the engineering work for Mr. Ubarri?

A. Yes, sir.

Q. And Mr. Acuña was his leading counsel?

A. His consulting attorney, Francisco de P. Acuña.

Q. For how many years was Mr. Acuña his consulting attorney?

A. For many years no other lawyer was known to be Mr. Ubarri's except Mr. Acuña.

Q. As far back as 1884 or '85?

A. Yes, sir.

Q. Do you know who was his 'procurador'?

A. Mr. Tomas Caballero.

Q. Do you know whether or not Julian Matienzo was a nephew of Mr. Ubarri?

A. Yes, sir; Mr. Julian Matienzo was a nephew of Mr. Ubarri but they did not live together.

Mr. SWEET: That is all.

The COURT:

Q. Who was this man Ubarri? Was he a Spaniard over here or was he a Porto Rican born?

A. He was born at Vizcaya, a province in Spain.

Q. At what age did he come here?

A. It is said that he came here very young.

Q. If he did, then how did he get such influence with the Spanish Crown, if he didn't go back?

A. Because he was a hard working man, he built up a fortune. At the same time he was a strong character and he managed to dominate until he was the owner of the situation.

Q. How could he dominate those people who came direct from the Crown here?

A. Because at that time money was above everything, and he, who as a matter of fact was a hard working man, increased his fortune through his labor.

Q. Did that inure in any way to the benefit of Spanish officialdom and the Spanish Crown so as to give him this influence? Even though he was rich, unless it benefitted the Spanish Crown, how could he get influence over them? Unless he in some manner helped the Spanish revenues, how did he get all this influence?

A. Because he also by means of that influence paid as little to the treasury.

Q. Did he see that others paid correspondingly much?

A. Undoubtedly so.

Mr. SWEET:

Q. The fact is, he was a remarkable man, was he not?

A. Yes, sir.

Q. He was a man of great force of character, was he not?

A. Yes, sir.

Q. He kept elections in line here with the government at home, did he not?

A. Yes, sir; always those elections went as he wanted. Those elected were those who he wanted elected. In exchange for the influence which the government gave him, he gave the government the deputies or representatives which the government wanted. Where he exercised the greatest influence I believe was——

Mr. HAWKINS: I object to the statement of beliefs or opinions.

The COURT: I will see that it does not prejudice your case.

A. The reason why he exercised that influence was that he was the chief of the volunteer battalion which was an army of over a thousand men in San Juan and in the rest of the towns of the Island he had control of that force, which was an armed force and it was said that the existence of that battalion helped to secure national control of Spain in this latitude.

Mr. HAWKINS:

Q. Following that up, was he subject to the orders of the Captain General as that chief of this volunteer army?

A. He ought to have been, but the opposite was the case, was the real fact.

Q. You testified that Mr. Tulio Larrinaga and Francisco de Paul Acuña, one of them was his lawyer and the other his engineer, and Tomas Caballero was his 'procurador.' Were they employed by him exclusively; that is, were they taken up entirely with his work?

A. That is the case with regard to Mr. Tulio Larrinaga. He was the regular employé of Mr. Ubarri. With respect to Francisco de Paul Acuña, no.

Mr. HAWKINS: That is all.

Witness retires.

UNITED STATES OF AMERICA,
District of Porto Rico, ss:

Arthur J. Harvey being duly sworn, deposes and says that he is the Official Stenographer of the District Court of the United States for Porto Rico; that he reported in shorthand the testimony in the case of Succession of Jacinto Lopez *v.* Buenaventura Ubarri; and that the foregoing document, consisting of ten typewritten pages, is a true and correct transcript of the testimony of the witnesses Robert H. Todd and Ramon Falcon and is all of the testimony given by the said witnesses at the time of the trial of said cause.

ARTHUR J. HARVEY.

Subscribed and sworn to before me this third day of March, 1909.

[Seal United States District Court for the District of Porto Rico.]

JOHN L. GAY,
Clerk Dist. Court of U. S. for P. R.,
By C. A. DAVIDSON, *Deputy.*

[Endorsed:] 137, 20,800. In the District Court of the United States for Porto Rico. Succession of Jacinto Lopez *vs.* Buenaventura Ubarri. Transcript of the testimony of the witnesses Robert H. Todd and Ramon Falcon.

[Endorsed:] File No. 20,800. Supreme Court U. S., October Term, 1908. Term No. 137. Buenaventura Ubarri e Yrunategui, Pl'ff in Error, *vs.* Jacinto Lorenzo Lopez Laborde *et al.* Stipulation of counsel and addition to record. Filed April 6th, 1909.

Supreme Court, U. S.
FILED.
APR 7 1909
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1908.

No. 137.

BUENAVENTURA UBARRI Y YRAMATEGUI,
PLAINTIFF IN ERROR,

v.

JACINTO LORENZO LOPEZ LABORDE ET AL.,
DEFENDANTS IN ERROR.

BRIEF ON BEHALF OF PLAINTIFF IN ERROR.

WALTER D. DAVIDGE,
CLIFFORD S. WALTON,
Attorneys for Plaintiff in Error.

IN THE

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DEFENDANTS IN ERROR.

BRIEF ON BEHALF OF PLAINTIFF IN ERROR.

THE CASE.

This case comes here on a writ of error to the District Court of the United States for Porto Rico.

On June 6, 1905, Jacinto Lorenzo Lopez Laborde, María Consolación Lopez Laborde, Manuel Demetrio Lopez Laborde, Enrique Lopez Laborde, and María Concepción Graxiana Lopez (by her grandmother, Concepción Laborde), filed their complaint against Francisca Luisa Lopez Laborde, Pablo Ubarri Yramategui, Rufino Ubarri Yramategui, José María Ubarri Yramategui, Ventura Ubarri Yramategui (the plaintiff in error), Modesta Ubarri Yramategui, as the successors of one Pablo Ubarri, deceased.

The complaint alleged:

That all the plaintiffs were citizens of Porto Rico, and all the defendants, except Francisca Luisa Lopez Laborde, who was a sister of the plaintiffs, and was made a defendant because she declined to be joined as a party plaintiff. That the defendants Rufino resided at Puerta Tierra, Porto Rico; Pablo and Ventura, the plaintiff in error, respectively at Barcelona and Madrid, Spain; José at San Juan, Porto Rico; Modesta at Málaga, Spain, and Francisca in the island of Porto Rico.

That the plaintiffs were all over the age of twenty-one years, except María Concepción Graxiana, who was represented by her grandmother, Concepción, her nearest of kin.

That on November 7, 1884, one Jacinto Lopez Laborde y Martinez, a citizen of Porto Rico, residing in the municipality of Dorado, died intestate, leaving an estate of the value of 123,077 Mexican pesos, as appraised in the abintestate proceedings, but, the plaintiffs averred, really of the value of about 300,000 pesos, and that the said appraisement of 123,077 pesos was a fraudulent estimate placed upon the property by the said Pablo Ubarri, the elder, the father of the plaintiff in error, at the instance of said Ubarri, as would more fully thereinafter appear.

That immediately after the death of the said Jacinto Lopez the following abintestate proceedings were had: The judicial occupation, the declaration of the heirs by the court, cessation of the judicial occupation, the appointment of said Pablo Ubarri administrator of the estate under power of attorney by Concepción Laborde, the widow of deceased; the making of an inventory and appraisement of the estate, liquidation of the inheritance property, partition of the estate and adjudication to each heir of his portion, and an apportionment to the widow of sufficient property for the payment of claims against the estate; approval of the court to this partition, protocolization of the partition made, registry in the registry of property of the portion allotted to each one of the heirs, and of the property set aside and adjudi-

cated to the widow for the payment of debts or claims against the estate.

That in these proceedings the heirs were represented by the procurador, Tomás Caballero.

That on April 23, 1885, the following persons were declared to be the heirs of said Jacinto Lopez, share and share alike: Nicolasa Trinidad Lopez Garcia, Luisa Antonio Lopez Garcia, Francisca Luisa Lopez Laborde, Jacinto Lorenzo Lopez Laborde, María Concepción Lopez Laborde, Enrique Lopez Laborde, and Manuel Demetrio Lopez Laborde, and the estate was by order of the court duly adjudicated and apportioned.

That the accountant and divider of the estate was Francisco de P. Acuña, and the guardian *ad litem* of the minors was Julian Matienzo; the representative of the widow was Pablo Ubarri, substituted by Tomás Caballero, his attorney-in-fact.

That in these proceedings debts to the amount of $40,848.30 were set forth against the estate, including a debt due Pablo Ubarri of $24,900.00. That all these debts if due should have been paid by the widow from the portion of the estate set apart for the payment of said claims.

That the widow, however, who had by the terms of the division of the estate become the trustee for all the creditors, and held the property with which to pay said debts, believed or averred that the said debt due said Pablo Ubarri was not valid, and therefore she refused to pay it, and thereupon Ubarri brought an action against the succession of Jacinto Lopez, which included the plaintiffs, who were at that time each under the age of twenty-one years, the said widow being sued as the representative of the minor heirs, notwithstanding that sufficient property had been allotted to the widow for the payment of all claims, and that Ubarri had accepted said assignment in settlement of his own claim by his intervention in the proceedings, and notwithstanding the opposition of interest existing between the mother and the children by the former refusing to pay a

debt which the children were willing to allow; that upon the refusal of the widow to pay the debt and the bringing of the action Ubarri wrote the widow that he would not show her the details of the account, but that if forced to do so he would bring it to the court and he would regret to see her children left destitute, meaning that he would make her family suffer if they disregarded his wishes.

That pending the suit and before a decision had been rendered certain lands of the estate were attached for the payment of taxes for the years 1885, 1886, and 1887 by the municipality of Dorado, sold for taxes, and directly or indirectly purchased by and adjudicated to Pablo Ubarri; that all such proceedings were had during the pendency of the action, when he was acting as the attorney-in-fact of the widow, and that because of his great wealth and influential position he was in position to dictate and control the actions and conduct of the municipality of all of the steps taken and essential to the assessment, sale of property, and the adjudication thereof to the purchaser, and that he did so direct and control the same; that the sale was for an inadequate price and was made under the inspiration and direction of Pablo Ubarri and was in accordance with his definitely formed purpose to acquire the property and to acquire all of the property of the estate, as intimated in his threat.

That in substance and in fact during the proceedings covering the partition of the property, the appraisement, protocolization of the different interests as divided, Ubarri always acted not only for himself, but also was in full charge and control, through his agents or attorneys, of all the property involved in the estate.

That Ubarri was able to do this by reason of the fact that he was the general attorney-in-fact of the widow, with power to do all things in connection with the estate, and also with the power of substitution, and that under those powers he appointed Tomás Caballero as his substitute attorney-in-fact for said widow, and caused to be appointed his

nephew, Julian Matienzo, as guardian for the heirs; that he caused and directed the appointment of the appraisers and designated who they should be, and that his attorney, Francisco de P. Acuña, was the divider of the property, and that the said Ubarri controlled all the details in connection with the estate and the litigation therewith, except the employment of Lopez Landrón to defend the widow in the action to collect the debt.

That at the commencement of his action against this succession Ubarri caused to be levied upon the property an attachment of the same, by virtue of which the said property ceased to be productive, and because of said attachment no funds could be raised with which to pay taxes nor with which to support the family.

That the attorney of the widow moved that said attachment be dissolved, and thereupon the widow, believing that it had been dissolved, ordered that some wood be cut and sold from part of the property, and that he thereupon caused her arrest because thereof, and although upon the statement being made in court as above set forth the widow was acquitted of any wrong intent in the premises and the prosecution dismissed, yet Ubarri prosecuted an appeal to the Supreme Court of Porto Rico, wherein the judgment of the lower court was reversed and she was fined 140 pesos and sentenced to be committed to jail in the event said fine was not paid; that she was in ill health at the time and the court was petitioned to suspend or modify the sentence of imprisonment because she was unable to pay the fine, but Ubarri demanded she be sent to jail; whereupon her son, Jacinto Lopez, succeeded in borrowing the amount of said fine and paying it, but later the money was returned on receipt of a royal order from Spain granting a pardon to her.

The plaintiffs claimed $156,750, that being, they averred, the value of 275,000 Mexican pesos, the difference between 300,000 pesos, which they said the estate was worth, and 123,077 pesos, for which it was appraised. The complaint

was sworn to by one of the plaintiffs only, Jacinto Lopez Laborde (R., 1-14).

Process was served on Rufino, José, and Francisca Luisa Lopez Laborde. Pablo, Modesta, and the plaintiff in error were returned *non sunt* (R., 16, 17).

Francisca Luisa Lopez Laborde answered to the effect that she believed the allegations of the complaint to be true, so far as her information and belief extended, and that she was willing to abide by any judgment that might be entered, so long as no costs were assessed against her (R., 17).

José appeared and filed a general demurrer (R., 18).

On June 29, 1906, on an affidavit filed by Jacinto Lopez Laborde, an order of service by publication was passed against Pablo, Modesta, and the plaintiff in error, and on the same day an attachment issued (R., 19-23).

Rufino demurred to the complaint, setting up the defenses of prescription, *res adjudicata*, that it did not appear that the grandmother of the plaintiff, Graxiana, was either her general guardian or her guardian *ad litem*, as required by the Code, generally, and that whatever relief the plaintiffs might be entitled to was in equity and not at law, and further for the reason that it appeared from the complaint that all of the plaintiffs were citizens and residents of Porto Rico, and the defendant Francisca Luisa Lopez Laborde was also a citizen and resident of Porto Rico, citing the case of Luis Ballecillo y Mandry *et al. v.* Juan Bertran *et al.* (R., 24-26).

The court overruled the demurrer and allowed the plaintiffs to file an amended complaint (R., 26).

The amended complaint was filed on August 13, 1906.

Except the making of Francisca Luisa Lopez Laborde a party plaintiff, the amended complaint is devoted to restating the charges of fraud to the effect that the said Tomás Caballero was merely the agent of Pablo Ubarri, who it is alleged had full control of the estate from the death of Lopez Laborde until he became the owner thereof; that said Pablo

Ubarri directed the sale for taxes in order that he might become the owner of the property and that by his attachment he prevented the raising of money by which the taxes could be paid (R., 26-41).

Thereupon Buenaventura Ubarri, specially appearing, filed a plea to the jurisdiction that José María Ubarri was a citizen of Porto Rico and a necessary and indispensable party to the suit (R., 41-42).

September 11, 1906, this plea was overruled, but leave was granted to the plaintiffs to strike out the name of said José as a party defendant to the suit. It does not appear, however, that said name ever was stricken out (R., 43).

On the same day an attachment was issued against the other defendants (R., 43, 44, 45).

November 5, 1906, the defendants Pablo and Modesta Ubarri specially appeared for the purpose of objecting to the jurisdiction of the court and showed that the action was not to enforce any legal or equitable lien or claim to any real or personal property or to remove any incumbrance or lien or cloud upon the title to real or personal property within this district, but was, as the complaint showed, to recover judgment against the succession of Pablo Ubarri for the sum of $156,750; and further that said Pablo and Modesta were at the institution of the suit, and still were, subjects of the King of Spain and inhabitants in that kingdom; that a certain order of this court had been published in a newspaper of the city of San Juan, Porto Rico, but that no personal service had been had upon them, nor had they been within the district since the filing of the suit; and that the court was without power so to obtain jurisdiction over the persons of these defendants in this action (R., 50, 51).

And thereupon the court, on December 12, 1906, on the authority of Ortiz *et al. v.* Alcalá del Olmo *et al.*, 2 P. R. Fed. Rep., 95, incorrectly cited in the record, page 57, as Fernandez *v.* Alcalá del Olmo, dismissed said Pablo and Modesta from the cause, and awarded them their costs and dissolved the attachment as to them (R., 57, 60, 61).

On November 14, 1906, Buenaventura Ubarri, the plaintiff in error, answered. He denied every allegation of fraud, and set up the defense that the action was barred by prescription (R., 52-56).

On this answer, on December 15, 1906, issue was joined.

December 27, 1906, Rufino Ubarri moved to dismiss the complaint because of want of jurisdiction. He set up that he was born in Porto Rico, where he had since generally resided, and that after the American occupation he had refrained from making the declaration of his intention to preserve his allegiance to the Crown of Spain, and that therefore he was a citizen of Porto Rico, and the court, April 2, 1907, filing a written opinion, dismissed the case as against him (R., 58, 59, 61, 170-182).

Buenaventura Ubarri thereupon, on April 8, 1907, moved the court to dismiss the action for lack of indispensable parties, which was on April 15, 1907, overruled, to which this defendant duly excepted (R., 62, 64).

On April 15, 1907, the plaintiffs amended their complaint by adding the allegation that "The said Buenaventura Ubarri has not resided in the island of Porto Rico to exceed the period of three years at any one time, or at different times all combined from the year 1889, the date of the year in which this action accrued, until the commencement thereof, or the present date," invoking sections 1859 *et seq.* of the Civil Code, and also section 39 of the present law of civil procedure of Porto Rico, which, they claimed, excluded from the time of prescription the absence of this defendant from the island of Porto Rico, and praying that the answer of this defendant might be stricken from the files (R., 63)

There was no answer or other pleading to this amendment, nor was the answer stricken from the files.

The case went to trial on April 15, 1907, before Mr. Justice Rodey and a jury, and resulted in a verdict in favor of the plaintiffs for $99,000, on which the court forthwith, on April 19, 1907, entered judgment for that amount and costs (R., 65).

A motion for a new trial was made and overruled, from which this defendant excepted, the court filing a written opinion, to which the attention of this court is respectfully requested (R., 66, 69, 70, 71).

This defendant thereupon applied for a writ of error, which was duly allowed and the case brought to this court (R., 72-77).

Assignment of Errors.

The court below erred:

1. In overruling the demurrer of the defendant, Buenaventura Ubarri.

2. In denying the motion of Buenaventura Ubarri made before beginning of the trial, to dismiss the cause for want of indispensable parties after the court by its order had dismissed from the case the original defendants, Pablo Ubarri, Modesta Ubarri, and Rufino Ubarri, which said motion was further based on the fact that the complaint herein did not state facts sufficient to constitute a cause of action in favor of plaintiffs.

3. In overruling, at the end of the plaintiffs' case, the motion made by Buenaventura Ubarri for a peremptory verdict in favor of this defendant, or an involuntary nonsuit, for the following reasons:

(*a*) That a sufficient case has not been made out for the plaintiffs to go to the jury under all of the evidence.

(*b*) The plaintiffs' case shows that prescription has run.

(*c*) Because this defendant is only one of the heirs, and there is nothing in the evidence showing how a judgment should be apportioned, or that the defendant is liable *in solido*.

(*d*) Because the cause of action set forth, and which the evidence tends to prove, does not survive as against the heirs or against this defendant.

(*e*) Because of the lack of indispensable parties, to wit: Pablo Ubarri é Yramategui, Modesta Ubarri é Yramategui,

Rufino Ubarri é Yramategui, and José María Ubarri é Yramategui, who, together with defendant, constitute the succession of the estate of Pablo Ubarri y Capetillo.

(*f*) Because the plaintiffs in establishing their case make a collateral attack upon a judgment of a proper and competent court.

4. In refusing to give the following instruction, No. 1, requested by this defendant: The burden of the proof is upon the plaintiffs to establish, to a reasonable extent, that the taking of the property in question was wrongful, and that said wrong was done by, or caused to be done by, Pablo Ubarri.

5. In refusing instruction No. 2, asked for by this defendant, as follows:

There is no presumption from the fact that Pablo Ubarri was a powerful and influential man; that he exercised such power or influence in committing said wrong.

6. In refusing instruction No. 3, asked by this defendant, as follows:

There is not sufficient proof to establish, even inferentially, that Pablo Ubarri exercised his power or influence in wrongfully using the process of the courts.

7. In refusing instruction No. 4, asked by this defendant, as follows:

Even if the jury find, as a matter of fact that Pablo Ubarri exercised his power and influence to remove judges, and used the process of the courts for his own benefit, the jury cannot legitimately infer that he exercised such power and influence in this case unless there is direct evidence to that effect.

8. In refusing instruction No. 5, of defendant, as follows:

If the jury should find that there was any wrong committed on the part of any officers of the court in using the judicial process, Pablo Ubarri is not responsible therefor unless the jury find from the evidence that he caused the said officers to commit such acts.

9. In refusing instruction No. 7, of defendant, as follows:

Such damages as the jury find for cause to these plaintiffs, if they find such to be the case, shall be assessed to the defendant only in one-fifth (1/5) thereof.

10. In instructing the jury, at the close of the case, as follows:

The prayer of complainant asks judgment against the succession for damages which they (plaintiffs) estimate and lay at $156,750.00 American dollars, with interest thereon from whatever date in the year 1889 the evidence has shown you that the cause of action, if any they have, accrued.

11. In instructing the jury at the close of the case as follows:

But the court instructs you, as it is presumed because defendants have not shown the contrary, that these defendants took the estate of their father, the said Pablo Ubarri y Capetillo, without benefit of inventory, and hence became liable for all of the debts which that estate owed, and therefore service upon them is sufficient to authorize the court to give a judgment against the succession for whatever amount, if any, you may, in your discretion, find to be due.

12. In submitting, by its charge to the jury, the case upon the theory that defendant, Buenaventura Ubarri, was liable for the whole amount of damages claimed, or the liability, if any, of the succession, or of all of the heirs of Pablo Ubarri Capetillo, because of the matters and facts set forth in the complaint.

13. In charging the jury, as follows:

> "Notwithstanding, gentlemen, that there is evi-
> " dence in the cause tending to show the tremendous
> " power and influence that this man, Pablo Ubarri,
> " had over officials, and perhaps courts and officers
> " of the Island of Porto Rico during his life-time, yet
> " unless you believe, from a preponderance of the evi-
> " dence, that he exercised such influence banefully
> " in the levying of the execution in question you
> " should find for the defendants, because under the
> " evidence it is clear that whatever wrong, if any, he

"did to this estate was done by causing it to be ap-
"praised and offered for sale and buying it in at the
"tax-sales on this execution for much less than its
"actual value; in other words, the wrong must have
"been Ubarri's, because a wrong done by court offi-
"cers as of themselves without his influence would
"not bind these defendants, but the fact that Pablo
"Ubarri gained advantage, if you believe from a pre-
"ponderance of the evidence that he did from the
"wrongs, if you believe there were wrongs done, may
"be taken into consideration in determining, in con-
"nection with the other evidence in the case, whether
"or not such wrongdoing was brought about by his
"wrongful influence, if any."

14. In charging the jury as follows:

"Their only remedy (referring to the plaintiffs)
"is the one they are asking here in this suit—that is,
"a judgment against the estate for the amount of
"their damages."

15. In charging the jury as follows:

"The only question for your consideration is
"whether or not, after the said Ubarri got his judg-
"ment against the estate of the father of these
"plaintiffs, he collected the sum due him in an op-
"pressive manner, and collected, in fact, more than
"was due him."

16. In instructing the jury, as follows:

"If you do not believe, by a preponderance of the
evidence, that Pablo Ubarri, by undue influence,
fraud, and oppression, did so deprive these people of
their property, you must find for the defendants."

17. In submitting this case at all to the jury, since it had no jurisdiction, either under the allegations of the bill or under the evidence offered, to entertain the case or to render a judgment therein, since the complaint did not set forth facts sufficient to constitute a cause of action, nor did the

evidence set forth a cause of action, and, further, because the cause of action, if any existed, was prescribed; and, further, because this action was not the appropriate action to obtain the relief prayed for by plaintiff.

18. In entering a judgment herein in the manner it did, the same being irregular, illegal and without the power or jurisdiction of the court to make, considering the complaint herein and the evidence offered in this case, and for the further reason that to enforce the said verdict would be a taking of property without due process of law.

19. In overruling the motion for new trial filed herein, for the reasons therein set forth, which said motion was also accompanied by an affidavit as to the discovery of new evidence material to the issues herein.

POINTS AND ARGUMENT.

I.

Taking the plaintiffs' case, allegata and probata, as a whole, no such case is made out as ought to have been entertained by a court of justice. No fraud and no injury to the plaintiffs are established.

Jacinto Lopez, father of the complainants, defendants in error, was indebted to Pablo Ubarri in the sum of $24,000. Lopez died in 1884, and the debt not having been paid was probated against his estate, and agreed to by the parties in interest (R., 83-95). A sufficient amount had been apportioned to the widow to pay all probated debts (R., 29, 30, 88). Some time after the death of Lopez, Pablo Ubarri asked for payment of the debt, and although the children of Lopez were willing to allow it, the widow refused to pay it. The creditor then insisted on the collection of what was legally due him and in a friendly manner, in 1887, advised

her not to make it necessary for him to sue the estate, to the injury of herself and her children (R., 107).

At the time we are speaking of it was necessary under the Spanish law for a party bringing suit to avail himself of the services of both an attorney-in-fact (procurador) and an attorney-at-law to appear before the court and prosecute his rights. The fees and expenses were often very heavy. Besides that there was a requirement that stamped paper be used, which was a burdensome tax. The costs of the clerks, marshals, and others officials were high. The losing party had to pay all the costs, including stamped paper, attorneys' fees, clerks' and marshals' costs, and the fee of the attorney-in-fact.

The advice of Pablo Ubarri was what it should have been and such as the heirs of Lopez should not have ignored.

However, the debt was not paid and Ubarri sued the estate for the amount due. The suit went through the usual procedure and resulted in judgment for the plaintiffs. The defendants, the successors of Lopez, appealed to the court of appeals, which affirmed the judgment of the lower court. Attachment was levied upon certain property of the succession. The property attached was advertised for public sale. It was bought in by Ubarri and formally and finally adjudicated to him (R., 132-136, 137-143).

It also appears of record that for cutting timber on the property, in violation of this attachment, by Mrs. Laborde, she was proceeded against criminally by Ubarri, for which she was tried and acquitted by the lower court, but by a higher court, on appeal, sentenced to a fine of 375 pesetas and in default of the payment thereof one day in prison for each 12½ pesetas and costs (R., 143-146).

The heirs of Jacinto owed also large sums of money for taxes in arrears, and in order to collect these amounts certain property of the succession was attached in accordance with the laws and regulations in force at that time. The property attached for taxes was sold at public sale and bought

in by Ubarri (R., 123-127). This was during the time of his attachment, for his claim against the succession and the attachment for taxes had priority over his attachment, so that the only protection he had was to buy at the tax sale (R., 119).

So far at least there can have been nothing fraudulent. The probating of his claim against the succession, the admission of the heirs of its validity, their subsequent refusal to pay, his institution of suit against the estate to collect the amount due, his attachment to protect his demand, the adjudication in his favor, so confirmed, his criminal proceeding against Mrs. Laborde for violation of the attachment and her subsequent punishment therefor, the adjudication to him of the attached property at the public sale thereof, the sale for taxes in arrears and his purchase thereunder to protect his own lien—certainly in all of these events there can be no suspicion of fraud. There is not a syllable in the record to show that any of these proceedings and sales were not entirely regular, and the testimony of the plaintiffs' witnesses shows affirmatively that they were all conducted regularly and in the usual course.

But the defendants in error will say it was not in any or all of the above-mentioned steps that the fraud was perpetrated. The real or actual fraud consisted in the inadequate prices at which the properties were sold, purposely grossly insufficient so that Ubarri could get possession of the property of the succession.

Let us examine this charge, and let us begin at the very beginning, the appraisement of the property of the estate in the abintestate proceedings.

The record of the abintestate proceedings is set out in full in the record (R., 83-95). The portion of that record to which we wish to call particular attention is the third paragraph on page 86: "About inventories and division the interested parties having agreed after some discussion among themselves, they asked for the information of the judicial

inventory and at the same time the appraisement of the property, and this having been ordered after the appointment of a curator for minor actions on account of the incompatibility of the mother to represent them in court, the clerk (escribano) Don Esteban Calderón was appointed to make the inventory and Don Tulio Larinaga and Don José Rafael Davila designated as experts by the curator of the minors, *in which appointment they all agreed,* it was done with the following result." Then follow the items of the inventory and appraisement. The total value in the inventory was $123,077.35, which included the debts of the succession, which amounted to $40,048.30, liquidated in consequence—the difference between the two sums being $83,029.05. "*This inventory,*" the record goes on to recite, "*was approved after notification to the interested party. They appeared before the court stating that the total amount of the liabilities should be added,* $15,029.05, the value of interest, and therefore the liquidated amount was reduced to $68,000. *The parties ratifying this statement, it remained definitely approved, the inventory with the amount of* $68,000.00," and so forth.

How could there be any fraud in this, when the interested parties all formally agreed to it?

Yet this appraisement is attacked in the complaint and it is there alleged "the plaintiffs aver the fact to be that the said estate was then actually worth the sum of about three hundred thousand pesos," as against 123,007, "and that the said appraised value of 123,077 pesos *was a fraudulent estimate placed upon the value of said property by Pablo Ubarri Capitillo, or at the instance of said Ubarri, by the appraisers, for the purpose of enabling said Ubarri to fraudulently obtain the ownership thereof*" (R., 28).

Not a single syllable in the complaint to show that the appraisement was not a perfectly fair one; the merest whisperings and suggestions as to what might have been!

Jacinto Lopez, the only one of the plaintiffs who signed

or swore to the complaint, was called as a witness. He testified as to the value of the estate at the time of the abintestate proceedings. No foundation was laid for him as an expert, and he was called simply to tell what he knew. He stated that Ubarri had advised his mother to put a low valuation on the property to escape taxation; that he, Ubarri, advised his, Jacinto's, mother to appraise it at 123,000 pesos. Being asked how he, the witness, knew this, he replied that he *had heard his mother say it*. His testimony on this point was stricken out (R., 78, 79, 81, 82).

Subsequently Jacinto's mother, Concepción Laborde, was called to the stand, but she was not interrogated as to this matter (R., 98-101).

On the other hand the uncontradicted testimony for the defense showed that in 1895 or 1896, after the building of a railroad through or near them, the plaintiff in error actually sold his one-fourth share of the lands in question for 8000 pesos, and that even after the American occupation, the other portions were sold, so that the whole property brought only $35,000 (R., 160, 162). In his motion for a new trial because of after-discovered evidence the plaintiff in error offered to show by a public document made a few years before the death of Laborde that he had declared that all of his property, including this property, was worth but 90,000 pesos (R., 69, 70).

Even suppose the appraisement was too low. What then? Each heir was allotted his proportionate share of the whole; it could make no difference to them what the basis of the partition might have been. If by the low appraisement the parties in interest succeeded in accomplishing their design of escaping heavy taxation, the estate actually gained by such a valuation. However, there is *nothing* to show that Pablo Ubarri had anything to do with the matter. The clerk of the court, Calderón, was appointed to make the inventory, and Larinaga and Davila as experts, by the curator

who had been appointed by the judge of the first instance of the district (R., 83, 86).

But the defendants in error will say that they were actually injured by the sales for taxes and under the execution of the property for inadequate prices. This contention is disposed of by the testimony we have cited above.

Moreover, in both these sales for taxes and under the execution, the testimony is *uncontradicted* that they were *in all respects regular* (R., 118, 165). The defendant estate was defended by counsel of its own choice. Even the complaint admits this (Par. XIV, R., 38). In the first, the alcalde or mayor ordered the appraisement and sale (R., 110); and in the second, the judge of first instance of the district himself presided (R., 142).

Not only this, but the judgment of Pablo Ubarri against the estate was for $33,653.75 and interest to accrue and costs (R., 137). The lands attached and sold were "Monte Rey" and "Los Officiales," which were appraised at $16,712.50 (R., 87, 137, 141), so that even if we take the estimate of the witness, Jacinto Lopez Laborde, as to the value of the entire estate, as contrasted with the appraised value, the sale under the execution did not satisfy the judgment. At any rate one thing is clear, that Pablo Ubarri is not shown to have interfered in any way with the judicial sale.

As to the tax sale, the only connection Pablo Ubarri is shown to have had with it is in the fact that pending that proceeding he petitioned the mayor to collect out of certain personal property any taxes the Laborde estate might owe before proceeding against the real property on which he had a lien, evidently fearing a failure, as there was, to satisfy his suit (R., 127), but this was all.

Even let us go to the very ultima thule of hypothesis and admit, for the purposes of this argument, that the prices realized by both these sales were inadequate. What then? Inadequacy of price of itself does not establish fraud.

> Erwin *v.* Parham, 12 How., 197, and especially the able note to this case in 13 L. C. P. ed., 952.
>
> Slater *v.* Maxwell, 6 Wall., 268.

The defendants in error, however, will contend that the fraud was not merely in the alleged inadequacy of price, but the relationship existing between Pablo Ubarri and Concepción Laborde, as well as that existing between him and the other persons who had to do with the estate.

It is true that after the death of Jacinto Lopez, Concepción Laborde executed and delivered to Ubarri a power of attorney, on June 1, 1885, and that afterwards Ubarri, by virtue thereof, substituted in his stead Tomas Cabellero. The power and substitution are set out at pages 96, 97, and 98, of the record.

Cabellero, the procurador of Ubarri, in many matters, was appointed by the court in the abintestate proceedings; and Acuna, who was also appointed by the court as the divider of the estate, was the leading counsel for Ubarri in many cases, his consulting attorney. Julian Matienzo, who was appointed the guardian of the minor children in the abintestate proceedings, was an agent of Ubarri in many things. On February 21, 1885, after she had refused to pay the debt, Pablo Ubarri wrote to Concepción Laborde that she might withdraw the power of attorney whenever she pleased. This, however, was an offer of which she never availed herself.

This was all the evidence on this point.

Pablo Ubarri seems to have been rather an extraordinary character. He had come to Porto Rico from Vizcaya, in Spain, when he was very young. He was a very hard worker, and amassed a fortune. He was very prominent in politics and was one of the leaders of the Spanish party in the island, and as such he had great weight with the home government. He was the chief of the volunteer battalion, which was an army of over a thousand men, in San Juan. In Porto Rico there was in those days what was called a "diputación," which was a supervising authority over all the municipalities, and had control of their budgets, of taxation, and everything pertaining to the municipalities. It saw to it that the municipalities should collect municipal

and provincial taxes, and it was a sort of administrative appeal body for any tax-payer who felt aggrieved on account of high taxation. It was composed of sixteen members, elected at large from the island. They met twice a year in ordinary session. It had a presiding officer called a president, a vice-president and secretary, who had no vote. During all the time between the sessions of that body, which had by law a standing committee called a permanent committee, appointed by the governor within its own body, consisting of three members living in San Juan. The presiding officer of that committee was the vice-president of the diputación, and the other two members were appointed by the governor. This committee would transact all business coming before it in the absence of the main body, subject to the approval of the latter. Ubarri was the vice-president of the main body and the president of this committee during the years 1879 to 1887. There was *nothing* to show, however, that this committee had anything to do with the taxes herein mentioned.

It is in evidence (addition to the record) that on one occasion Ubarri was advised in another matter that a certain judge was about to determine a case against him, and that within seventy-two hours thereafter the judge was removed. The witness could not state, however, that he was removed by Ubarri.

It is out of testimony of this character that the plaintiffs below sought to make a charge of fraud. The case was peculiarly one, which, if given to the jury at all, ought to have been submitted under the most careful instructions. There is, in this record, absolutely no evidence tending to prove actual fraud; nor is there any evidence which establishes such a relationship from which fraud can be inferred.

This defendant prayed the court to instruct the jury that the burden of proof was upon the plaintiffs to establish to a reasonable certainty that the taking of the property in question was wrongful, and done, or caused to be done, by

Ubarri; that there was no presumption from the fact that Ubarri was a powerful and influential man that he exercised such power or influence in committing the alleged wrong; and that there was no sufficient proof to establish that he had exercised his power or influence in wrongfully using the process of the courts; and that the jury could not infer, in the absence of testimony, that he so exercised his power and influence in this case; and that if they should find that any of the officers of the courts had been corrupt, Ubarri was not responsible therefor, unless the jury should find that he caused the said officers to commit such acts.

The court, however, overruled these prayers, and submitted the case to the jury in the broadest possible manner, in substance:

That if the jury believed that Pablo Ubarri had exercised his power and influence over the officers of the courts, and the municipal officers, that then they would find for the plaintiffs. This was in the face of the fact that there was *absolutely nothing* in the record to show, or from which it might be inferred, that any such influence could be used with such officers, and certainly there was no evidence that any such influence had been used with such officers (R., 83-95, 101, 112, 132, 148; ad. to record).

This is the substance of the entire charge of fraud, and we submit to the court that it is simply absolutely without foundation.

Prior to the adoption of the Spanish Civil Code of 1889, it was provided under the law of the Partidas that if the plaintiff should not prove the allegations set up in a complaint, the defendant was absolved (L. 1, tit. 14, p. 3), and that one that alleges minority to sustain his complaint must prove it as well as the injury or fraud received (L. 4, tit. 14, p. 3).

In the absence of provisions in the present Code, upon this subject, the ancient laws of the Partidas would govern, and this is especially the case as to the acts forming the

basis of the present action, which appears to have been founded before the date the present Code went into effect, July 31, 1889.

This principle as to proof is founded on the Roman Civil Law, and is referred to in article 2006, on the Civil Law by Domat, vol. 1, p. 795.

II.

The cause of action had prescribed.

This action was instituted on June 6, 1906, more than seventeen years after the last act of the alleged fraud complained of, which was on February 16, 1889, when certain lands of the heirs of Jacinto Lopez were sold under decree of court (R., 1, 142).

The period of prescription applicable here is to be determined by the Spanish Civil Code of 1889 and the present Code of 1902.

Article 1939 of the Code of 1889, which is identically the same as section 1840 of the present Code, provided:

> "Prescription which began to run before the publication of this Code shall be governed by the former laws; *but if after this Code became operative all the time required in the same for prescription has elapsed, it shall be effectual even if according to said prior laws a longer period of time may be required.*"

If, then, after this provision took effect, any action should be barred by the terms thereof, it would have prescribed, whatever the former provisions might have been. We shall consider later the provisions of the law in force before these Codes went into effect. The purpose of this provision was to bar any action against which all the time mentioned in these Codes might have run.

This very question was before this court in Royal Insurance *v.* Miller, where the time provided by this Code had

not elapsed, and therefore the court applied the provision of the old law, in that case twenty years. Said this court:

> "As the fifteen years fixed by the Code for the bringing of personal actions had not elapsed between the promulgation of the Code and the bringing of this action, it follows that the controversy was not within the terms of the proviso, and therefore the limitation of the cause of action is to be determined not by the Code provision fixing fifteen years, but by the former law."
>
> Royal Insurance Co. *v.* Miller, 199 U. S., 353.

Section 1869 of the Civil Code of 1902 provides:

> "The following prescribe in one year:
> "(1) Actions to recover or retain possession;
> "(2) Actions to demand civil liability for grave insults or calumny, and from obligations arising from the fault or negligence mentioned in section 1803, from the time the aggrieved person had knowledge thereof."

This article corresponds identically with article 1968 of the Code of 1889.

There was no claim in the pleadings, nor could any proof be offered, to the effect that plaintiffs below were not aware at all times of the acts complained of.

Section 1803 of the Code of 1902 provides:

> "A person who by an act or omission causes damage to another, when there is fault or negligence, shall be obliged to repair the damage so done."

This section applies to actions *ex delicto*.

Section 1068 can not apply as that refers exclusively and alone to actions arising out of contracts and agreements.

Section 1060 of the present Code of 1902 (being 1093 of the former Code) provides:

> "Those [civil obligations] arising from acts or omissions in which faults or negligence, not punished by law, occur shall be subject to the provisions of Chapter 2 of Title XVI of this book."

Chapter 2, Title XVI, contains sections 1803 and following, including 1811, which relate exclusively to actions of tort such as the case at bar.

The Supreme Court of Louisiana, in construing the Civil Code and the prescription applicable to actions similar to the case at bar, hold that they are prescribed in one year in analogy with the Civil Code in force in Porto Rico.

See—

Edwards *v.* Turner *et al.*, 6 Robinson, 382.
Anley *v.* Adley, 9 La. Annuals, 490.

If section 1869 of the Civil Code of 1902 does not apply, then there is but one other section which can apply, section 1865 of that Code (article 1964 of the Code of 1889):

> "A mortgage action prescribes after twenty years, and those which are personal and for which no special term of prescription is fixed, after fifteen years."

In the leading work on the Spanish law of Civil Procedure by Manresa, Vol. 2, p. 274 (note), ed. 1905, this learned author refers to law 5, tit. 8, book 11, Nov. Recop. (law 63 of Toro), and states that the personal action (*la acción especial ejecutiva*) is prescribed in ten years, and adds that this old law is now superseded by article 1964 of the Civil Code of 1889, which prescribes by fifteen years when not otherwise especially provided and does away with personal actions known as "*ejecutiva*" and "*ordinario*."

Defendants in error, however, will contend that, right in the face of and notwithstanding article 1939 of the Code of 1889 (section 1840 of the present Code), the period of prescription applicable to the case is that of the law before the Code of 1889 went into effect. But even under the old law they are barred, inasmuch as this is a personal action, and under the laws of Toro, which were in effect prior to the adoption of these codes, the period of prescription was *ten* years. The law in question is law 63, Toro (law 5, tit. 8, book 11, Nov. Recop.), as follows:

> "The right to bring an action for a personal obligation is prescribed by *ten* years, and a personal action and a writ of execution issued in respect to it is prescribed by not less than twenty years; but when the obligation involves a mortgage, or where the obligation is mixed, personal and real, the debt is prescribed by not less than thirty years."
>
> See also, to the same effect, 1 White's New Recopilacion, 348, §24.

We contend, however, that the case is governed by article 1939 of the Code of 1889 (re-enacted in section 1840 of the present Code), above quoted.

The plaintiff in error raised this point by his answer, motion to dismiss, partly in the nature of a demurrer, his motion for a verdict at the conclusion of the plaintiffs' case, and in his motion for a new trial (R., 55, 62, 66, 136, 154, 155).

III.

Neither has the period of prescription been interrupted or stayed by the absence of Buenaventura Ubarri in Spain.

The plaintiffs below, by an amendment which they made to their complaint, sought to avoid the effect of the defence of prescription set up by this defendant by alleging—

> "The said defendant Buenaventura Ubarri has not resided in the Island of Porto Rico to exceed a period of three years at any one time or at different times all combined from the year 1889, the date of the year in which this action accrued, until the commencement thereof or the present date. Whereupon complainants invoke sections 1859 *et seq.* C. Code, and also section 39 of the present law of Civil Procedure of Porto Rico, which exclude from the time of prescription the absence of the defendant from the Island of Porto Rico" (R., 63).

There was no answer to this amendment. It was made the day the trial began.

The effort of counsel for plaintiffs below to avoid the prescription by this amendment seems to have arisen from a misunderstanding upon their part of the law.

Section 1859 of the Civil Code does not relate to *the Prescription of Actions or the loss of a right to sue.* It relates to the prescription of *ownership* and other *property rights* which may be *acquired* by adverse possession.

THERE IS A RECOGNIZED DISTINCTION BETWEEN THE ACQUISITION OF TITLE TO PROPERTY BY ADVERSE POSSESSION AND THE PRESCRIPTION OF AN ACTION BY LAPSE OF TIME.

> "In the one instance, the fact of possession operates to vest title to the disputed property by creating a conclusive presumption of right in the possessor, and establishes rights of ownership which cannot be destroyed by subsequent legislation; it is a question largely of affirmative action on the part of the adverse possessor rather than of mere inaction on the part of the original owner.
>
> "In the other instance, there is no creation or destruction of any right in the complaining party or the defendant, but the statute operates as a mere bar of the former's remedy after the lapse of a specific period—a bar which may be removed by subsequent legislation or by a new promise or acknowledgment by the defendant.
>
> "*The principle of adverse possession is intended and operates to fix titles and constitutes a rule of property, while pure statutes of limitation do neither, but merely prescribe the time in which a particular remedy may be exercised, leaving the rights of the respective parties unaffected.*"
>
> 19 A. & E. Enc. Law, 2nd. ed., page 148.
> Campbell *v.* Holt, 115 U. S., 620.
> Townsend *v.* Jemison, 9 How. U. S., 407.

The same distinction recognized by the American and English Law is observed in the Civil Law of Spain. It is also

to be observed between "Acquisitive Prescription" (of property rights), article 3458, Louisiana Civil Code, and "Liberative Prescription" (of actions), article 3459, Louisiana Civil Code.

A cursory examination of the titles and articles of the Civil Code relating to prescription will show a distinction between the prescription of ownership and other property rights, or the acquisition by adverse possession, and the *Prescription of Actions.*

Chapter 1, title XVIII, of the Civil Code, beginning with section 1831, contains general provisions relating to prescription. Section 1831 says:

> "Ownership and other property rights are *acquired* by prescription in the manner and under the conditions specified by law.
>
> "Rights and actions of any kind whatsoever also are *extinguished* by prescription in the same manner."

Chapter 2 of the same title is entitled—

"Prescription of Ownership and Other Property Rights."

All the articles included within this chapter, from section 1841 to section 1861, relate to the acquisition of a right in real or personal property by adverse possession.

Section 1858 provides that—

> *"Ownership and other property rights in real property* shall prescribe by possession for ten years as to persons present, and for twenty years with regard to those absent, with good faith and with a proper title."

Section 1859, upon which defendants in error rely, is supplemental to section 1858, and refers to the acquisition of ownership and other property rights in real property by prescription.

It has, therefore, nothing to do with the subsequent articles relating to the Prescription of Actions.

So that Buenaventura Ubarri's absence from Porto Rico has nothing to do with the lengthening of the period of time from ten to twenty years, because this provision applies only to the party in possession in cases where he *loses* the right to property by prescription, which is not the present case where the plaintiffs below have always resided in Porto Rico.

This was also provided by Law 20, Title 29, Part. 3, and the same thing is provided by article 1958 of the Spanish Civil Code, which entirely agrees with section 1858 of the Civil Code in force in Porto Rico.

The title or heading of the first authority just above quoted (Law 20, Title 29, Part. 3) says:

> "Manner of counting time (for purposes of prescription) when the man in possession of the real estate subject to prescription, *and its owner or proprietor goes away from the country.*"

The text of the law itself to which the heading refers is as follows:

> "*In hac longi temporis prescriptione, si in parte temporis is,* CONTRA QUEM PRESCRIBITUR, *est presens, et in parte absens.*"

Chapter 3, of title XVIII, is entitled—

> "*Prescription of Actions.*"

Section 1862 provides:

> "Actions are prescribed by mere lapse of time specified by law."

Section 1865 determines the prescription of limitations for such actions as this.

> "A mortgage action prescribes after twenty years, and those which are personal, and for which no special term of prescription is fixed, after fifteen years."

This action is a personal action, being one for the collection of damages.

There is no exception contained in this chapter, relating to Prescription of Actions, except that found in section 1874:

> "Prescription of Actions is interrupted by their insitution before the courts, by extrajudicial claim of the creditor, and by any act of acknowledgment of the debt by the debtor."

These are the only circumstances which stay or interrupt prescription.

Escriche, in his Diccionario de Legislacion y Jurisprudencia, volume IV, page 643, points out the difference between the acquisition of property rights by adverse possession or prescription and the loss of a right of action by prescription. He says:

> "*Prescription of Actions.*
>
> "The mode of freeing one's self from an obligation comes of its compliance not having been demanded within the time fixed by law; or rather the extinction of a debt comes of the failure of the creditor to exercise his right against the debtor within the time fixed by the law.
>
> "Prescription, therefore, serves not alone to enable us to acquire the dominion of the thing, but, as has been said in the preceding article, it is also for the purpose of acquiring the freedom or exoneration from a charge, obligation, or debt, when the creditor has permitted the time to elapse which is established for the exercise of his action or right.
>
> "IT RESULTS THEREFORE THAT TO PRESCRIBE AN ACTION OR OBLIGATION IS NOT THE SAME THING AS TO PRESCRIBE A THING, SUCH AS AN INHERITANCE OR ESTATE. TO PRESCRIBE A THING IS TO ACQUIRE IT OR MAKE IT YOUR OWN; AND TO PRESCRIBE AN ACTION OR OBLIGATION IS ON THE CONTRARY TO EXTINGUISH OR END IT.

> "In the Prescription of Actions, the requisites of good faith and just or legal title are not necessary, it is sufficient if the time has run, as prescribed by Title 8, Book 11, of the Novisima Recopilacion, and that established by the Supreme Court (Sent., April 7, 1867)."

Falcon, in his Commentaries on the Civil Code, treating of prescription, says:

> "In this class of prescription (Prescription of Actions) the law demands nothing of the person in whose favor the prescription runs. It is the contrary in the case of a prescription as a means of acquiring. The situation of the debtor is a situation entirely passive, and as he has nothing to do on his part, it is not necessary that a just title, nor good faith, nor continued possession exist. The lapse of time is sufficient to extinguish the action of the creditor."
>
> Volume IV, page 461.

Again, on page 464 of the same work, it is stated:

> "In reality the Prescription of the Action must not be interrupted except in one single mode, to wit, its exercise before the courts. * * * Actions are given in order that they may be exercised in a suit; not to exercise them in the time during which they last, is equivalent to renunciation thereof."

In the work Revista de Legislacion y Jurisprudencia, volume 99, page 140, we find the following explicit distinction made between the acquisition of property rights by adverse possession and the loss of the right of action by prescription:

> "Prescription is one of the most important institutions of our law, and at the same time one of the most necessary. This word bears within itself the idea of the birth and of the extinction of a right by the lapse of time. But the subject being thoroughly examined and going to the basis of it, it is easy to observe that

> the ideas of birth and extinction are intimately united, and are different aspects of the same thing, in such way that the birth of the right is only a consequence of its corollary extinction, and we know that with the negative aspect exists always the positive one. * * * Prescription is customarily divided into that which acquires and that which extinguishes, a classification which is analogous to positive and negative, or the prescription of ownership and other property rights and the Prescription of Actions."

Alcubilla (5th ed.), volume VIII, page 835, under the title of "Prescripcion de Dominio y demas Derechos Reales, y Prescripcion de Acciones," states the distinction between the two classes of prescription:

> "These two classes of prescription are being regulated by the civil laws. The first refers to what one possesses, and is a mode of acquiring dominion or title of another by the lapse of time, there existing the other requisites demanded by the law. The second class refers to one who has a right, and is the loss or lapse of this right or of the action which contributes to the recovery thereof, by the mere lapse of time, the debtor being thereby freed from the debt, charge or obligation."

Id., p. 837:

> "We have pointed out before the difference that exists between the prescription of property and that of actions; and it is also to be noted that in this latter the requisites of good faith and just title are not necessary, it being sufficient only the running of time in order to accomplish (Cod. Civil, art. 1961, laws of tit. VIII, Book XI, Nov. Recop., and decisions of the Sup. Court of April 7th, 1867, and others)."

Decisions of the Supreme Court at Madrid in support of the same are cited in the same volume, page 839, as follows:

> "The Prescription of Actions is affected by the mere lapse of time, without any need of other requisites (Sents., Feb. 7, 1880; April 1, 1884, and June 23, 1886)."

The Supreme Court of Spain has, in positive terms, held that the articles of the Code containing the chapter devoted to "Prescription of ownership and other property rights" do not apply to the Prescription of Actions.

In the decision of the Supreme Court of Spain of January 4, 1901 (volume 91, page 19), it is held:

> "That article 1946 of the Civil Code, *from the chapter of which it forms a part and by the provisions which precede and follow it, refers exclusively to the prescription of ownership and other property rights and not to the Prescription of Actions*, with respect to which article 1973 establishes generally and absolutely that prescription is interrupted only by the exercise of the action before the courts, by extrajudicial claim of the creditor, and by any act or acknowledgment of the debt by the debtor; it being a logical consequence of such precepts that by the declaration of a lapse of the proceedings (caducidad de la instancia) the interruption produced by the judicial citation is considered completely ineffective in so far as concerns the prescription of ownership and other property rights, according to said article 1946. But when the *Extinction of Actions* is treated of the lapse of the proceedings (caducidad) does not have the same effect, because neither the letter nor the spirit of article 1973 permits that it may have the effect of the action being lost; by reason of which this provision must be harmonized with that which is contained in article 419 of the Law of Procedure, which provides that the lapse of the proceeding does not extinguish the action which may not have been prescribed in accordance with law, and which may be again instituted in the proper suit."

Of course, the provisions of 1946 of the former Code, which correspond to section 1847 of the present code, are not involved in the case at bar, but the Supreme Court of Spain has very clearly determined that not only this article, but all those which precede and follow it in the same chapter relating to the prescription of ownership and other property

rights, have no application whatsoever to the Prescription of Actions.

Article 1870 of the present Code, corresponding to article 1969 of the Code of 1889, provides:

> "The time for the prescription of all kinds of actions when there is no special provision to the contrary, shall be counted from the date on which they could have been instituted."

It is a settled doctrine of the Spanish Civil Law that from the moment in which a right of action accrues upon any contract or wrong the appropriate action arises, and time begins to run without exception of any kind.

See following Sentencias of the Supreme Court at Madrid:

May 8, 1903.
February 13, 1901.
February 16, 1899.

Prescription runs against all persons *unless they* are included in same exception established by the law (Louisiana Civil Code, § 3521).

Furthermore, according to the law in force in Porto Rico during all of the times since the acts complained of in the complaint, as well as at the present time, an action may be instituted and a judgment recovered against a resident and non-resident.

At all times since the acts complained of the plaintiffs below could have instituted any action they might have had against Buenaventura Ubarri.

Until the change of sovereignty the process of the courts of Porto Rico ran to any part of the Spanish Kingdom, including the Peninsula, and service could thus be obtained upon defendant or the other heirs.

Article 269 of the former Code of Civil Procedure of 1885 provided:

> "When the residence of the person to be served is unknown, or if his whereabouts are unknown by

> reason of his change of residence, a statement shall be made thereof, and the judge shall order that the service shall be made by posting the writ at the usual public place, and by publishing it in the Official Gazette, and in the Official Bulletins of the Province where there may be such. He may also order the publication of the writ in the Gaceta de Madrid, when he deems it necessary."

See also article 284 of section V of the former Code of Civil Procedure. Article 300 thereof provides:

> "When service of summons is to be made or any other judicial proceeding is to be performed in a foreign country, the letters rogatory shall be transmitted through diplomatic channels, or by the means and in the manner prescribed in treaties, and in the absence of treaties as prescribed by the general provisions of the Supreme Government."

The Military Government, by its General Order 118 of August 16, 1899, continued in force the Code of Civil Procedure with respect to the summons and notification of parties.

See sections 70 and 72 of the General Order.

The Code of Civil Procedure of 1904 also gives the right to sue a non-resident in the insular courts to obtain jurisdiction over him by the publication of a notice, and to enter a judgment against him.

See sections 94 and 95 of the said Code of Civil Procedure.

The claim, therefore, of plaintiffs to the effect that the prescription was interrupted by the absence of the defendant below is not sustained either by law or by reason.

Even if sections 1858 and 1859 of the Civil Code should apply, as claimed by plaintiffs below, they would also be barred.

Section 1858 of the present Code is identical with article 1957 of the Code of 1889.

By the judicial order of April 7, 1899, promulgated by the Military Government, article 1957 of the Civil Code was amended to read as follows:

> "Ownership and other property rights in real property shall prescribe by possession after six years, as to persons present and absent with good faith and with proper title."

IV.

Nor has the period of prescription been interrupted or stayed by the minority of the plaintiffs below.

The plaintiffs sought to avoid the defense of prescription by alleging in their complaint that at the time of these transactions, the last in 1889, all of the plaintiffs were under the age of twenty-one years, except María Concepción Graxiana Lopez, who was then (August 13, 1906), under that age. That is admitted, but there is absolutely *nothing* in the record, except in the case of Jacinto Lopez Laborde, to show how old the others were, and *non constat*, but that they attained their majority early enough for even the period of fifteen years to have run before the filing of this suit, as in the case of Jacinto.

The record shows that Jacinto was forty-one years of age in April, 1907 (R., 78), but that is all we have, and all the jury had before them. It is true that in the record of the compulsory process for the collection of taxes there is a recital that on December 6, 1886, the proper officer went to the "home of Doña Concepción Laborde and notified her in due form, by herself and in representation of her minor children," and so forth (R., 123, 124). Again in the judgment of the Superior Court the "minor children" are mentioned. That was March 19, 1888 (R., 137). This is *all*

the evidence. The burden was clearly upon the plaintiffs to show that they were entitled to the benefit of the exception from the general law, if any existed. This they have not done.

The Civil Code of 1889 does not mention the burden of proof because it does not except infants from the general provisions as to prescription of actions. The laws of the Partidas, however, which obtained in Porto Rico before the Civil Code of 1889 became effective, required one who alleged minority to sustain his complaint, to prove it as well as the injury or fraud done him (Laws 1, 4, tit. 14, Partidas 3).

So that as to all except Graxiana we may say the fifteen-year limitation had run.

But even if we admit that besides Graxiana some of them were minors, even then the plaintiffs' case must fail.

It certainly will not be claimed by plaintiffs' counsel that such privilege or exemption was accorded minors, either by the Spanish Code of 1889 or the reformed Code of Porto Rico of 1902. NO SUCH PRIVILEGE OR EXEMPTION HAS EXISTED SINCE 1889.

By the former Civil Code, which took effect in Porto Rico on the 31st of July, 1889, in accordance with the terms of the royal decree of that date, it was provided in article 1932 thereof:

> "Rights and actions shall be extinguished by prescription to the prejudice of all kinds of persons, including juridical persons in the terms prescribed by law. Persons incapacitated to administer their property shall always retain the right to make claim against their legal representatives whose negligence may have been the cause of the prescription."
>
> Walton's Civil Law in Spain and Spanish-America, p. 164.

The same article has been re-enacted literally in the Reformed Code of Porto Rico of 1902.

By the adoption and promulgation of the Code of 1889 a

new body of laws was established in Spain and its colonies which superseded completely the ancient system. At that time there existed a series of ancient laws which caused perplexity and confusion throughout the Kingdom. There were the Fuero Juzgo, Fuero Real, Leyes del Estilo, Siete Partidas, Leyes de Toro, and Novisima Recopilacion.

By the adoption of the modern Code the letter and the spirit of the ancient legislation as to civil matters were superseded.

Section 1976 of the Code of 1889 provided:

> "All legal compilations (cuerpos legales), uses and customs which constitute the common civil law in all matters which are the object of this Code, are hereby repealed, *and shall remain without force or effect, either as direct obligatory laws or as supplementary law.* This provision shall not apply to the laws which have been declared in force by this Code."

Under the so-called transitory provisions of the said Code, it is provided in subdivision 4 of article 1976:

> "Actions and rights arising before this Code was in force, and not exercised, shall subsist with the extension, and according to the terms recognized by the preceding legislation, *but shall be subject, in regard to the exercise, duration and proceedings for enforcing them, to* THE PROVISIONS OF THIS CODE."
>
> Walton's Civil Law in Spain and Spanish America, p. 471.

The meaning and effect of this provision cannot be involved in doubt.

The commentator on the Civil Code, Leon Bonel y Sanchez, in his Commentaries, volume IV, page 1006, says:

> "With respect to subdivision 4 of the transitory provisions, this is intimately related with the first subdivision, and on treating of that subdivision, we have already said that it is equally just to respect

rights which are being exercised or which had begun to be exercised upon the taking effect of this Code, as well as vested rights not exercised or made the subject of suit; and as the exercise of the right must be regulated by the laws of the remedy, and these adjective laws can have a retroactive effect; from this it follows that rights acquired and not exercised or made the object of suit when the Code took effect, must be determined by the proceedings established in such Code, and only when such proceedings are pending at the time of the taking effect of the Code can the persons interested choose between the former and the new remedy."

Alcubilla (5th ed.), volume II, page 684, states:

"But if it is just to respect rights acquired under the preceding laws although they may not have been exercised (or made the subject of suit), no consideration or justice demands that their subsequent exercise (being made the subject of suit), their duration and the remedy to make the same effective should be exempt from the provisions of the Code. All these provisions have an adjective character, and it is known that laws of this character can have retroactive effect. Thus it is that according to subdivision 4, (article 1976) rights acquired and not yet exercised (made the subject of suit) when the Code took effect must be determined by the remedy provided in the latter, and it is only when such proceedings are actually pending at the time of the taking effect of the Code that the interested parties can choose between the old and the new proceedings."

The Supreme Court at Madrid (Sentencia, 29 Noviembre, 1899) held that, in reference to natural children born prior to the adoption of the Civil Code of 1889, the exercise of rights growing out of succession of the father, who died in 1893, should be determined with respect to provision 4 of article 1976 of the Civil Code of 1889 (Alcubilla, vol. 1900, p. 906).

Of course retroactive effect is never given to a law affecting the remedy unless such law specifically so provides.

The provisions of the Spanish Code of 1889, last above referred to, correspond with the principle of American jurisprudence that with respect to laws affecting the remedy they may be given retroactive effect. The true rule is that the duration of the right and the manner of exercising it is governed exclusively by the law in force at the time the suit is brought.

The question involved here is that even if the plaintiffs below, or any of them, had a cause of action in accordance with the laws in force prior to 1889, the failure to institute suit within the period of prescription established by the Code is fatal to the recovery of plaintiffs, even though they are or were minors.

The Code of 1889 did not make the usual exception in favor of minors, but left them subject to the ordinary law of prescription, and in compensation for this expressly gave the minor injured the right of action against his guardian (tutor) and protutor (Vol. I, Tit. IX).

> Walton, *supra*, pp. 163-180. (See especially arts. 234, 236.)

It is an admitted principle of law that the period of limitation or prescription established by law is one affecting solely and only the remedy and not the substantive right of a party, and therefore can be changed at the will of the law-making power.

We submit, therefore,

That neither the Code of 1889 nor of 1902 interrupted the statute of limitations in favor of a minor, and that the period of prescription or limitation must be determined by these Codes, and not by the former law.

The purpose and intention of the Civil Code to prescribe actions as against minors is evidenced in section 1833 of the

present Civil Code, which corresponds to article 1932 of the Code of 1889:

> "Rights and actions shall *extinguish* by prescription to the prejudice of all kinds of persons, including judicial persons, in the terms prescribed by law.
>
> "Persons incapacitated to administer their property shall always retain the right to sue their legal representatives whose negligence may have been the cause of the prescription."

It is apparent, therefore, that the minor is subject to prescription the same as other persons, and that if his legal representative does not avail himself of the ordinary prescription he has a right of action against him.

Concerning the said article of the Code, the eminent commentator Sanchez Roman, in his Derecho Civil Español, says:

> "Article 1932 contains a reform of former law, and is inspired by a diametrically opposite spirit.
>
> "According to the former law, a prescription did not extinguish rights and actions of every class of persons, but it excepted from the doctrine of prescription or made them the object of an extraordinary prescription when juridical persons, minors, etc., were involved. Today, all this has disappeared with the Code. Since the first general terms of the first paragraph of article 1932 declare prescription to be effective to extinguish rights and actions to the prejudice of every class of persons, including juridical persons; and although the Code says "Rights and Actions" it is clear that it does not refer alone to incorporal things, but in general to rights and actions which may be had upon or with respect to corporal things. By reason of this general and reformed theory of the former law, there disappears from the law established by the Code an ancient doctrine, of the rescissory action of dominion for the cases in which it was delivered, there being recognized in place of it the right of persons under disability to recover against their legitimate representatives whose negligence may

> have been the cause of the prescription; which is to declare the existence of a purely personal action, which by no means affects the existence or efficacy of the prescription which has run."

In the decision (Sentencia) of the Supreme Court of Spain of the 27th of May, 1904, it is held:

> "Rights and actions are extinguished by prescription to the prejudice of all kinds of persons, including juridical persons, in the terms provided by the law. This principle contained in 1932 of the Civil Code is applicable in its letter and spirit to the case of actions corresponding to a person under disability, and loss by the non-payment of the dividends within the time and in accordance with what is stipulated in the by-laws of the corporation which issued the stock."

We find in the Civil Code of France (Napoleon) and of Louisiana express provisions excepting minors from prescription.

See Louisiana Code, §§ 3522-3554.

But no such provisions were adopted in the Spanish Code.

Counsel for plaintiffs below will refer to section 40 of the Code of Civil Procedure adopted in 1904, by which it is provided that if a person entitled to bring an action other than for the recovery of real property be at the time the cause of action accrued within the age of minority, the time of such disability is not a part of the time limited for the commencement of the action. This is the best argument that prior to the adoption of the Code of Civil Procedure of 1904 prescription did run against minors. THAT IS WHY SECTION 40 OF THE CODE OF CIVIL PROCEDURE WAS ADOPTED.

Certainly section 40 of the Code of Civil Procedure will not be given retroactive effect when the right had *already prescribed* by the elapse of more than fifteen years.

V.

If any cause of action existed in favor of plaintiffs or any of them against Pablo Ubarri, it did not survive against the heirs of the latter.

> "The inheritance includes all the property, rights, and obligations of a person which are not extinguished by his death."
>
> Section 667, Civil Code 1902.

In the absence of a judgment rendered at the time of the death of Pablo Ubarri, a cause of action for the facts set forth in the complaint would not survive. In other words, a mere inchoate right of action for an alleged wrongful act, in its nature *ex delicto*, does not survive.

The Commentator Scævola, referring to the above section 667 (being 659 of the Civil Code of 1889), after citing a number of actions which do not survive, says:

> "Finally, and in order not to make interminable this catalogue of rights and obligations which are not transmitted with the inheritance, the penal responsibility, in accordance with what is set forth in number 1 of article 132 of the Code, is always extinguished by the death of the guilty party with respect to the personal penalties, and with *respect to the pecuniary ones only when at the time of his death there should not have been rendered a final judgment. If such were rendered and the pecuniary penalties were not made effective, the heirs will be obliged to satisfy them.*"
>
> Book 12, page 111.

The Supreme Court of Louisiana, passing upon this question, has held—

> "That liability for damages on account of any malicious wrong is strictly personal and does not survive."
>
> Jones *v.* Succession of Hoss, 29 La. Ann., 564.

VI.

The judgment should be reversed because of the lack of indispensable parties.

Originally the action was against Pablo, Rufino, José, Buenaventura, and Modesta Ubarri. It was dismissed as to Pablo, Rufino, and Modesta Ubarri (R., 1, 27, 57, 61). Leave was given plaintiffs to dismiss as to José, but they do not seem to have availed themselves of it (R., 43). At any rate when the case went to trial three of the heirs of the estate of Pablo Ubarri had been dismissed therefrom.

Pablo Ubarri died in 1893 or 1895, and his estate was partitioned among his heirs (R., 162).

Section 669 of the present Civil Code (article 661 of the Civil Code of 1889) provides:

> "Heirs succeed the deceased in all his rights and obligations by the mere fact of his death."

This is a principle of the civil law, and so when it is necessary to bring an action after the death of a person liable, *all* the heirs must be joined.

The only case in which the law of Porto Rico authorizes an action against an heir to exact from him the payment of an obligation or liability of the estate under which he claims is that contained in section 1051 of the present Civil Code (article 1084 of the Civil Code of 1889):

> "After the division has been made, the creditors may demand the payment of their debts in full of any of the heirs who may not have accepted the inheritance under the benefit of an inventory or up to the amount of their hereditary share in case they have accepted it under such benefit. In either case the defendant shall have a right to notify and summon his co-heirs, unless by disposition of the testator or by reason of the division he alone should be bound to pay the debt."

The succession as such, in the civil law, is simply the status or instrumentality through which or by which title to property is transmitted from a testator or intestate to his heirs. If it has the status at any time of a legal entity this ceases and is terminated upon a division of the property among the heirs.

> "A division legally made confers upon each heir the exclusive ownership of the property which may have been awarded to him."
>
> Section 1035, Civil Code of 1902 (article 1068 of the Civil Code of 1889).

From the moment of the division the succession, as such, ceases and the property composing the estate vests, and in the case of real estate is inscribed, in the name of the *individuals* who formerly composed the succession. The latter can no longer be sued as such, and all persons having any debts or claims against the testator or intestate which are recognized or enforcible by law, must bring their actions against the heirs individually and not against the estate or succession as such.

Section 1051 of the Civil Code, above referred to, authorizes the bringing of a suit against one heir after the division of the estate only for the recovery of an HEREDITARY DEBT, and by "creditors recognized as such" (Article 1049).

This is the only instance in which the civil law permits such an action. An hereditary debt is a debt or obligation existing at the time of the death of the testator or intestate, which is represented by some evidence in the nature of a contract, and which has been recognized by the testator or intestate as well as by the succession and the heirs.

Section 1051 above referred to is found in article 5 (section 5 of the Civil Code of 1889), which is entitled "PAYMENT OF HEREDITARY DEBTS."

Section 1049 above referred to corresponds to sections 1082 of the Civil Code of 1889.

Manresa in his Commentaries on the Code of 1889, Volume VII, page 707, says:

> "What does the phrase mean, 'Creditors recognized as such'? There is no doubt that the creditors whose credits appear to have been recognized, although privately, by the heirs or by some public means, by virtue of a judgment, are entitled to the status demanded in article 1082." (1049 present Code.)

Scaevola, in his Commentaries on the Civil Code of 1889 (Volume XVIII, page 477), commenting upon section 1082 of that Code (1049 present Code), says:

> "They are such creditors (creditors recognized as such) those who have in their favor debts called 'hereditary debts,' that is to say, those which, as is expressed in article 3781 of the Code of Mexico, were contracted by the author of the inheritance and independently of his last will and testament and for which he is responsible with his goods."

Again, on page 478 of the same volume, he says:

> "They, therefore, are creditors recognized as such according to said article, and in condition to oppose themselves to the partition, if there is not complied with the last condition contained in article 1082, those whose credits appear in public documents, provided that it be a first copy, or if it is a second copy that the latter has been given by virtue of a judicial order and by a citation of the person whom it might prejudice or his ancestor; in private document provided, however, that it has been recognized under oath before some judge competent to issue execution for the testator or intestate or his successors; in a confession of judgment made before a competent judge; in letters of exchange, etc., etc."

Again, on page 490 of the same book, referring to section 1085 of the Code of 1889 (section 1052 of the present Code), the same author says:

> "We will again direct our attention and study to the true hereditary creditors, they who *had* credits in their favor before the testator or intestate died and against him or to those who contracted in his favor debts against the personality of the estate and by titles *which affected all the interested parties equally.*"

It must be apparent that according to the Civil Code and the civil law, the action at bar is not based upon an "hereditary debt," and therefore can not be maintained against defendant, Buenaventura Ubarri, alone. If the defendants in error had any action, it was against all of the heirs, and only against all of them. Inasmuch as under the theory of the civil law the benefits and liabilities of an estate are shared equally by the heirs, no liability or obligation arising out of the acts of the testator or intestate can be enforced except as against all of them. If a judgment could be obtained, it could be enforced only in the proportion in which they shared the inheritance. As we have already shown, every one of the heirs of Pablo Ubarri could have been sued, and may now be sued, *in the absence of prescription*, in the local courts.

It is no answer to say that some of the heirs have disposed of their inheritance. If plaintiffs had a remedy, the law imposed upon them the duty of asserting it promptly; and if by their delay judgment could not be collected as against some of the heirs, the fault would be with the plaintiffs.

We insist that as the other heirs of Pablo Ubarri, Pablo Ubarri, Modesta Ubarri, and Rufino Ubarri, were not before the court upon the trial of this case, and when the verdict was rendered, no valid judgment could be rendered against defendant, Buenaventura Ubarri.

It is apparent upon the record that the court, in its rulings during the progress of this trial, and particularly in its charge to the jury, submitted this case upon the theory that the estate or "sucesion," as such, was before the court, be-

cause of the appearance of Buenaventura Ubarri in the cause.

This was undoubted error and fatal to the proceedings.

No law can be cited to justify the submission of the case to the jury in this form.

The plaintiff in error raised this defense by plea, by motion to dismiss, by motion for a new trial, by motion to direct a verdict or to enter an involuntary non-suit or dismissal, by exception to the instructions of the court, by his motion for a new trial, and by his prayer for an instruction to the jury that, if they found for the plaintiffs, he might be assessed only his proportionate part thereof, all of which were refused (R., 41, 42, 62, 136, 137, 66, 68, 148, 149).

The theory of the court below was that one of several heirs being before the court was sufficient to bring in the succession, and that therefore the case might proceed to trial and be submitted to the jury. The wrong done to the plaintiff in error is manifest. The jury found for the plaintiffs, and thereupon the court entered judgment against him *personally* (R., 65).

Leonora *v.* Scott, 8 La. Ann., 460.
Jones *v.* Britton, 16 La. Ann., 320.

Not even were all the heirs of Jacinto Lopez before the court. The record shows that besides the widow there were eight heirs of Jacinto Lopez. One of them was not made a party, nor was her absence accounted for.

VII.

All the issues in this case have been long ago formally adjudicated by courts of competent jurisdiction and are res adjudicata.

The abintestate proceedings began on December 4, 1884, less than a month after the death of Jacinto Lopez, on the application of Eduardo Trujillo, in the name of the latter's wife, Trinidad Lopez, and the following proceedings were

had: The judicial occupation; the declaration of heirs by the court; cessation of the judicial occupation; appointment of a curator for minor actions; the appointment of the appraiser, the clerk of the court to make the inventory, with Tulio Larinaga and José Rafael Dávila, experts, by the curator of the minors, in which they all agreed; the making of an inventory and appraisement of the estate; liquidation of the inheritance property; appointment of the divider by the representatives of the estate; partition of the estate and adjudication to each heir of his portion or interest in the estate, and an apportionment to the widow of sufficient property for the payment of claims against the estate, including that of Pablo Ubarri; approval of the court to the act of partition; protocolization of the partition made; registration in the registry of property of the portion allotted to each of the heirs, and the property set aside and adjudicated to the widow for the payment of debts or claims against the estate (R., 83-95).

The amended complaint, paragraph IV, states that Pablo Ubarri was appointed administrator of the estate, but of course that is a mistake (R., 29, 83-95).

Every opportunity was afforded for objection, but everything appears to have been agreed to.

These proceedings lasted until July 5, 1886.

So with the sale for taxes, the record shows that everything was *regular*, that opportunities for appeal were afforded, and that finally the property was sold in the usual manner (R., 118, 123-127).

Not a protest, no application to rectify any supposed wrongs; then, when the witnesses were all living, absolutely nothing done!

In the suit against the Lopez succession by Pablo Ubarri, the case went through all the usual stages, including the criminal proceeding for violation of the attachment issued in the civil suit begun on February 21, 1887, and ending with the sale of the attached property on February 16, 1889. The

civil suit was tried before the court of first instance of San Juan, and judgment entered for Pablo Ubarri for the money claimed, and interest and costs, which was affirmed on appeal, with costs.

And here it should be borne in mind that at that time, under the Spanish practice, an execution issued by virtue of a judgment was not carried out by a marshal or sheriff as with us, but was under the direct control and immediate direction of the very judge who dictated the judgment and issued the execution; that the debtor or party against whom the execution had been issued was entitled to intervene directly therein; that in the appraisement of the property to be sold he had the right to appoint an appraiser to look after his interests; that the sales were public, and as many people could attend them as cared to do so; that the debtor was called in to execute the public deed of sale to the bidder who had secured the property; and, finally, that the party against whom the execution was issued was allowed to protest, in case during the proceeding any infraction or violation of the law had been committed, requesting the annulment of the whole process of execution until said infraction was corrected, the execution proceedings being at a standstill until the request had been passed upon. (See arts. 948 and 1492 in connection with arts. 1481 and 1482, 740, 741, 744 and 745 of the Law of Spanish Civil Procedure.)

In the criminal action for violation of the attachment there was a trial in the court of first instance and a hearing on appeal. Concepción Laborde was declared not guilty of a crime in the first instance, but the timber which she had had cut was ordered to remain subject to the attachment. On appeal, however, she was convicted and sentenced to a fine, and in default of payment to imprisonment (R., 143-146).

The complaint states that the fine was remitted by a royal order from Madrid, but that is evidently a mistake. At least it does not appear in the record.

The parties to these actions were substantially the same as those to the present suit, the only difference being that Pablo Ubarri died, and this suit was against his heirs.

Indeed these contentions have long since been set at rest They never would have been heard of but for the change of sovereignty. The extent to which foreign judgments are to be recognized is fully discussed in Hilton *v.* Guyot, 159 U. S., 113.

It makes no difference that the Spanish notion of due process of law differed from our own. They were the solemn judgments of duly constituted courts of competent jurisdiction.

> "It is the duty of a nation receiving a cession of territory to respect all rights of property as those rights were recognized by the nation making the cession, but it is no part of its duty to right the wrongs which the grantor nation may have theretofore committed upon every individual. There may be an exception when the dispossession and wrong of the grantor nation were so recently before the cession that the individual may not have had time to appeal to the courts or authorities of that nation for redress. In such a case perhaps the duty will rest upon the grantee nation, but such possible exception has no application to the present case and in no manner abridges the general rule that among the burdens assumed by the nation receiving the cession is not the obligation to right wrongs which have for many years theretofore been persisted in by the grantor nation." * * *
>
> Cessna *v.* U. S., 169 U. S., 165.

Respectfully submitted,

WALTER D. DAVIDGE,
CLIFFORD S. WALTON,
Attorneys for Plaintiff in Error.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1916.

No. 137.

BUENAVENTURA IBARRA Y YRAMATEGUI,
Plaintiff in Error,

vs.

JACINTO LORENZO LOPEZ LABORDE ET AL.,
Defendants in Error.

BRIEF IN REPLY TO DEFENDANTS IN ERROR.

WALTER D. DAVIDGE,
CLIFFORD S. WALTON,
Attorneys for Plaintiff in Error.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1908.

No 137.

BUENAVENTURA UBARRI Y YRAMATEGUI,
PLAINTIFF IN ERROR.

v.

JACINTO LORENZO LOPEZ LABORDE ET AL.,
DEFENDANTS IN ERROR.

BRIEF IN REPLY TO DEFENDANTS IN ERROR.

In order that some of the points raised at the argument may be made clearer, we avail ourselves of the leave granted by the court to file this brief in reply to that of the defendants in error.

Indispensable Parties.

It will be recalled that when this action was instituted the defendants were the five heirs of Pablo Ubarri, and that for one cause or another the defendants Pablo, Rufino, and Modesta were dismissed from the case. On the application of counsel for plaintiffs below leave was granted to dismiss the action as to José, but it does not appear from the record that the permission was ever availed of.

Our contention is that, this not being a suit to recover an hereditary debt, it was necessary to make all the heirs of Pablo Ubarri paries defendant. As we have pointed out in our original brief, the only instance in which an action may be sustained against one of a number of heirs of an estate is to be found in the case of an action brought to recover an hereditary debt. In the case at bar the claim set out in the complaint is not that of a *debt* at all. Much less is it to recover an hereditary debt. The alleged claim of the heirs of Jacinto Lopez was not a debt in any sense of the word, nor were the heirs creditors. So that the quotations in the brief of the defendants in error (pages 13-19) really have no application. The very section on which they rely, section 1051, relates to the payment only of hereditary debts. It is found in article 5, section 5, of the Civil Code of 1889 and is entitled "Payment of Hereditary Debts."

On page 22 of the brief of the defendants in error we find the naive suggestion that this defendant below, if he thought the other heirs should be brought in, should have cited them to appear, and that his failure to do so was his own concern and not the responsibility of the plaintiffs. Surely counsel for defendants in error are not serious in this. The contention that this defendant below should have summoned to appear in this action his brothers and sisters, the other heirs of the estate of Pablo Ubarri, when they had been dismissed from this case by the court below and by the very judge who presided all the way through this action, requires no consideration. The other heirs *had been made parties defendant*, and that very court had dismissed them from the case. The very idea of taking steps to have them brought again before the court in order that they might again be dismissed carries within itself its own refutation.

Aside from the authorities cited in our original brief and looking at the matter from the standpoint of principle, the important question is as to the effect of the present judgment. The theory of the plaintiffs below was that the *sucesion*

of Pablo Ubarri was still an entity and that as long as one of the heirs thereof was before the court the jurisdiction was complete to render judgment against that *sucesion*. The complaint demanded judgment "against the said succession of Pablo Ubarri" (R., 14, 40). As we have pointed out in our original brief, at page 44, at the time the suit was filed there was no *sucesion* of Pablo Ubarri in existence. Pablo Ubarri had died and his estate long ago divided among his heirs. However, the action was against the succession.

The judgment was against the plaintiff in error personally. Now let us see to what the theory of the defendants will lead us. Suppose the same plaintiffs below should file a similar suit against another of the heirs of Pablo Ubarri, could this judgment be pleaded in bar thereof? We submit that it could not, for the reason that this is a personal judgment against Buenaventura and that suit would be against another heir, in which judgment might (if the theory of the defendants in error be sound) be rendered against that heir, and the same thing might be repeated as to other heirs of Pablo Ubarri. That shows the vice of the contention of the defendants in error.

Moreover, let us go a step further and take the other side of the record. The plaintiffs below were Jacinto, María Consolación, Manuel, Enrique, Maria Concepción, and Francisca, six in all. The declaration of heirs in the record of the abintestate proceedings shows that there were eight heirs of Jacinto Lopez besides his widow (R., 86, 88, 89, 91, 92). The absence of the omitted parties is not accounted for. The plaintiffs have recovered a personal judgment against the plaintiff in error for a wrong alleged to have been done by his ancestor to the *sucesion* or estate of Jacinto Lopez. Now, suppose one of the heirs of Jacinto Lopez, not included in the action, for instance, Consuelo, should file a suit based upon the same alleged wrong. Could the recovery of the plaintiffs below be pleaded in bar of that suit to which Consuelo was not a party? We think not. The defective con-

dition of the record as to parties plaintiff was not raised below. We merely mention it here to show to what the theory of the defendants in error will logically lead. The court, however, followed that theory of the case by submitting to the jury the question as to "whatever wrong, if any, he [Pablo Ubarri] did to this estate" (R., 150).

At the argument in this case a question was asked by one of Your Honors as to whether José, being a party to the suit, would make it necessary for the plaintiff in error, before bringing his suit here, to avail himself of the provisions of the rule of "summons and severance." We submit that that is not necessary in this case, for the reason that the judgment appealed from is on its face a personal judgment rendered merely against the plaintiff in error. José was not a party to it (R., 65).

Prescription.

We contend that this action is barred by section 1869 of the Civil Code of 1902, identical with article 1968 of the Spanish Civil Code of 1889. That section is as follows:

> "The following prescribe in one year:
> "(1) Actions to recover or retain possession;
> "(2) Actions to demand civil liability for grave insults or calumny, and from obligations arising from the fault or negligence mentioned in section 1803, from the time the aggrieved person had knowledge thereof."

Section 1803 of the Civil Code of 1902 provides:

> "A person who by an act or omission causes damage to another, when there is fault or negligence, shall be obliged to repair the damage so done."

And that those sections govern this case appears to be plain.

In an action of tort, said the Supreme Court of Spain:

> "The fact of having been injured on account of a derailment, only gives rise to an action springing

See similar case involving "Culp
sion of law, Alcubilla, vol. 1907, p. 518
comparatively new few decisions have arisen
a number of adjudications under the correspo
Louisiana Civil Code.

from the injury itself, as far as said injury can be imputed to the acts of omission or commission of the company in whose line the accident occurred.

"According to section 1968 of the Civil Code such action prescribes within a year.

"In an action brought after the legal time for the filing thereof has expired and which springs from a derailment, the exceptions filed against said action on the ground of prescription should be sustained and a decision so holding does not infringe upon sections 1968 (part 2d) and 1969 of the Civil Code."

Sentencia of April 30, 1898.

The Supreme Court of Louisiana in passing on a similar provision in the Louisiana Code (article 3536, Louisiana Civil Code, 1900) expressly holds the following cases within a somewhat similar provision.

Auty *v.* Adle, 9 La. Ann., 490.

Edwards *v.* Turner, 6 Robinson, 382.

New Orleans *v.* Southern Bank, 31 La. Ann., 560.

Gillaspie *v.* Bank, 35 La. Ann., 779.

Caillonet *v.* Franklin, 35 La. Ann., 220.

Lizardi *v.* Canal and Banking Co., 35 La. Ann., 414.

The defendants in error, however, contend, notwithstanding the specific provisions of the section above referred to, that section 1865 of the Civil Code of 1902 (article 1964 of the Spanish Civil Code of 1889) applies. That section is as follows:

> "A mortgage action prescribes after twenty years, and those which are personal and for which no special term of prescription is fixed, after fifteen years."

Upon what they base their argument that the specific provisions of section 1869 of the Civil Code of 1902 do not apply, and that this case must fall within the general provisions of the latter section, actions "which are personal, and for which no special term of prescription is fixed," shall prescribe within fifteen years is not clear. The general provis-

[illegible] under the same provi-
As these provisions are
under them but there are
nding provisions of the

ion of the latter section, on its face, is intended to cover only those actions not otherwise provided for; but this action is provided for by the former section.

It is true that in Royal Insurance Company *v.* Miller, 199 U. S., 353, *under the circumstances of that case*, this court applied the fifteen-year provision, but only because that case was peculiar in its facts and just one to fall under the general classification of cases not otherwise provided for. It also applied the twenty-year provision of the old law, while under the old law, cited in our original brief, the case at bar would have been governed by the ten-year provision of that law.

The scheme of the defendants in error is to apply the fifteen-year prescription, and then to avoid that by endeavoring to show, first, the minority of the defendants in error, and the absence from Porto Rico of members of the succession of Pablo Ubarri, including the plaintiff in error. In the first place the minority of the infants, with the exception of Graxiana, is not established. The complainants averred that the plaintiffs were below the age of twenty-one years at the time of the transactions complained of, but there is nothing in this record to show that they, excepting Graxiana, did not become of age subsequently thereto, and more than fifteen years before the institution of this suit. We find, in the brief of the defendant in error, the astounding statement that *we did not prove the lack of minority*. As already shown, the burden was not upon us to prove the lack of minority, but rather was it upon them to prove minority in order that they might avail themselves of the exception to the general rule. The only evidence in the record as to the minority of the plaintiffs below, is to be found in the testimony of Jacinto Lopez (R., 78); in the recital in the record of the tax sale, December 6, 1886, that the proper officer went to the "home of Doña Concepción Laborde, and notified her in due form, by herself, and in representation of

her minor children," and so forth (R., 123, 124); and in the judgment of the Superior Court the "minor children" are mentioned March 19, 1888 (R., 137). It does not appear, however, what the ages of the children were, nor does it appear who the minors were.

By the fact that in April, 1907, Jacinto swears he was forty-one years of age, and that in the amended complaint he swears that all of the plaintiffs, including himself, were each and every one of them, under the age of twenty-one years at the time of the transactions complained of (R., 27), the last being on February 16, 1889, we may see how wide-awake, active, and accurate was his sense of veracity. But with the observation that it is extremely difficult to comprehend, we shall let that pass.

It is sufficient for us that the burden was upon the plaintiffs below to establish minority, if material, and that they have not done.

> Laws 1, 4, tit. 14, Partidas 3, not repealed by the Civil Code of 1889.

Secondly, the defendants in error seek to avoid the application of the fifteen-year period of prescription by the contention that the plaintiff in error was absent from Porto Rico some of the period of prescription. As to this, all we have is the amended complaint (it should really have been called the amendment of the complaint) found on page 63 of the record. There it appears that:

> "Now at this time, permission of the court being first had and obtained, the complainants amend said complaint by adding to the last paragraph of allegation in said complaint numbered I the following statement. The said defendant Buenaventura Ubarri has not resided in the island of Porto Rico to exceed the period of three years at any one time, or at different times all combined from the year 1889, the date of the year in which this action accrued, until the commencement thereof, or the present date."

This amendment was filed on April 15, 1907, the very day the jury was empaneled to try the issues in this cause. There was no answer or other pleading filed to it. Its allegations were never admitted or denied. So that even if the absence of the plaintiff in error, or any of the other heirs from Porto Rico could have made any exception to the running of the period of fifteen years, the fact of his or their absence from the island of Porto Rico is *absolutely unproven*. The amendment was sworn to by Jacinto only. It was merely a pleading and not evidence as such of the facts alleged.

Our contention, however, is that the one-year period of prescription must apply.

If the theory of the case of the plaintiffs below were true, that is, that the succession might have been brought into court by bringing in one of the heirs, then the absence from Porto Rico of the defendant in error could from no point of view be material, for the record shows that other members of the succession, José and Rufino, were continuously in Porto Rico, where they resided.

Moreover, as we have shown in our original brief at pages 33-34, according to the law in force in Porto Rico, even those of the original defendants who were absent in Spain could have been sued. So that we must conclude that the absence of any of the defendants below in Spain, even if established, would not take the case out of the statute of prescription, and they have failed to establish in any way the absence of any of the defendants below. The amended complaint did set forth that the defendant *resided* in Spain. That was *residence; non constat* that he was not continuously in Porto Rico (R., 27).

The language of the section of the Civil Code of Procedure of Porto Rico of 1904, invoked by the defendants in error is *absence* from and *return* to the island. Section 1859 of the Civil Code of Porto Rico, on which they rely, relates entirely and only, as is shown in our original brief, pages

25 *et seq.*, to prescription of *ownership* and *property rights*, as distinguished from prescription of *actions*.

In conclusion of this point, it should be borne in mind (and this is in reply to a question from the bench) that this action is not to recover the property or to revindicate the rights thereto (see paragraph XXI of the amended complaint). If that were the action, it would be necessary to bring in as defendants the owners of the property at the time the suit was filed. The right to bring such an action would also have prescribed.

Section 1858, Porto Rican Civil Code, 1902.
Article 1957, Spanish Civil Code, 1889.

The burden of establishing absence of the defendants from Porto Rico, if essential to the case of the plaintiffs below, was upon them. They have not proved it.

Fraud.

At the hearing something was sought to be made of the fact that Pablo Ubarri had brought an action to collect the debt confessedly due him. It may not therefore be amiss to submit the following decisions of the Supreme Court at Madrid:

> "Notwithstanding that according to the provisions of section 3, part 7, he who causes damage is bound to repair it, it is also a legal principle not to be forgotten, which principle appears in title 34, part 7: that: 'No harm can be done to another by a person exercising his rights.'"
>
> Sentencia of May 3, 1882.

> "When a court renders a judgment in answer to the prayers of a litigant, the damage which might result as a consequence thereof cannot be regarded as caused by the favored party, nor by his order or advice in securing the fulfillment of said judgment, and section 3, title 15, part 7, in order to hold a party responsible for damages, requires that he be directly

responsible for them. And it certainly cannot be legally held that he who deliberately goes to the courts to demand and maintain a right of his, such as the collection of a debt which has been acknowledged, is acting in an illegal or punishable manner."

Sentencia of May 5, 1883.

"In order to secure a judgment for damages it is necessary to prove that such damages exist and that they are the result of fault, fraud or malice by the party accused of causing said damages, as already decided by the Supreme Court in various decisions of the same."

Sentencia of June 10, 1884.

"He who limits himself to ask a court of justice to grant him a right which appears to be more or less clear, does not exactly commit a wrong, and in cases where the prayer is disallowed because of its not being justifiable, the only punishment that can be imposed upon the party complainant is the payment of costs."

Sentencia of June 27, 1896.

At the argument one of the justices asked whether the property had been bought in at the tax sale by the mayor of the municipality. In order to set at rest any contention as to the fact that it was not, we refer to page 121, *ad finem* of the record.

The question of the alleged fraud is fully presented in our original brief. We observe many inadvertent inaccuracies in the statements of counsel for defendants in error, but we have not the space here to correct them. The record references will show just what was done.

Respectfully submitted.

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FILED.
APR 7 1909
JAMES H. McKENNEY,
Clerk

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 137.

BUENAVENTURA UBARRI Y YRAMATEGUI,
PLAINTIFF IN ERROR,

vs.

JACINTO LORENZO LOPEZ LABORDE, MARIA CONSOLACION LOPEZ LABORDE, MANUEL DEMENTRIO LOPEZ LABORDE, ET AL., DEFENDANTS IN ERROR.

BRIEF OF THE DEFENDANTS IN ERROR.

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SUPREME COURT OF THE UNITED STATES.

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BRIEF OF THE DEFENDANTS IN ERROR.

STATEMENT.

The case is presented upon a writ of error to the District Court of the United States for Porto Rico, and involves a judgment for the defendants in error against the plaintiff in error, "of the succession of Pablo Ubarri y Capetillo" in the sum of $99,000.00, with interest from date and costs, based upon the verdict of the jury rendered April 19, 1907 (Transcript, page 65).

(Unless otherwise specified, the references in this brief will be to the printed pages of the transcript of record.)

The defendants in error, plaintiffs below, were all children of Jacinto Lopez y Martinez, who died in Porto Rico intestate, on November 7, 1884 (R., p. 84), leaving real

estate to the extent of 4,505 acres (R., p. 86), besides personal property of the value of $37,500 (R., p. 87).

Upon the death of Jacinto Lopez, his widow, Conception Laborde, gave to Pablo Ubarri a power of attorney to settle the affairs of the late Jacinto Lopez, this power of attorney carrying the absolute authority to do any and all things necessary in the premises, including the power of substitution.

Ubarri assumed control of the affairs of the deceased by appointing his procurador, Tomas Caballero, as his substitute attorney in fact; his nephew, Julian Matienzo, guardian of the minor children of Lopez, his chief counsel; Francisco de P. Acuna, the divider of the estate; and he also selected the appraisers. As the presentation of the record will show, the management of the estate was carried forward with commendable dispatch, and every legal detail was observed. The record shows the testamentary proceedings in full, and demonstrates the careful, and perhaps equitable, manner in which the property was divided among the creditors of the estate and the heirs of the deceased. These debts, it will be observed, were given in detail and amounted to the sum of $40,848.30 (R., 94).

To the widow, Conception Laborde, was transferred property to the value of $63,077.35, which was set apart for the expressed purpose of paying the $40,000 of indebtedness above referred to (R., 88).

The division of the estate among the heirs of Lopez is shown in the record on pages 89 to 93, inclusive.

It is sufficient to say that no objection has been made to any of the probate proceedings in this matter; and the record shows that Mr. Ubarri and the widow of the deceased Lopez worked in harmony in adjusting the affairs of the estate until Mr. Ubarri presented to her a claim against her late husband for the sum of $17,000, but which had, by the addition of interest, grown to the amount of $24,000. This amount was included in the schedule of the debts set forth

by the appraisers in the testamentary proceedings (R., 94). The widow of Lopez called upon Mr. Ubarri for a statement of his account showing what it was for, when it was created, and such other details as she believed herself entitled to, before adjusting so large a claim.

Mr. Ubarri was indignant that the widow should question his claim or call for any statement from him whatsoever in the nature of a verification of its details. He notified her that unless she settled the claim without question he would appeal to the courts for its adjudication.

Mr. Ubarri brought an action against the estate of the late Jacinto Lopez for $24,000, and the action resulted in a judgment in his favor. At the time of commencing the action he caused a writ of attachment to issue, and all of the property of deceased Lopez was placed in the charge of a depository or custodian, either as a result of this attachment or by the manipulation of the tax collector's office, over which he had control as the head of the Diputacion Provincial, and from the date of this attachment the family of Lopez was denied the use or benefit of one dollar of that estate for the support of the family, or with which to meet the obligations of the deceased, or with which to pay the taxes assessed against the property. No attack has been made in this cause at any time upon the judgment of the court in favor of Mr. Ubarri. It has all of the time been conceded that the court, having given Ubarri a judgment for $24,000 against the estate of Lopez, he was entitled to recover the money, but the astounding fact is, that, notwithstanding he was in control of the estate as the attorney in fact of the widow and through his nephew and attorneys was actually in charge of every detail of its management, yet the property, which had been appraised at $123,000, was consumed by Ubarri to the last dollar in collecting his judgment of $24,000 and the comparatively insignificant amount due for taxes. No other creditor received a cent, and the widow and children were left absolutely penniless.

The complaint charged that, in collecting this judgment, from the moment he levied his attachment upon the different pieces of property comprising the estate until the last dollar's worth had passed into his possession, he violated the confidence that had been imposed in him from the first as the attorney in fact of the widow, and, what was considered more serious, he used the great influence of his position officially, financially, and politically to fraudulently acquire the estate of the heirs, and to ruin the family whose rights and property interests were a sacred trust in his hands. It appears that said Pablo Ubarri y Capetillo died in 1894, leaving a very large estate.

The complaint was first filed against all of his children, including the plaintiff in error, "as the sucesion of Pablo Ubarri, deceased," and the theory of the complaint was, in harmony with the Spanish law, that the defendants, and each of them, took the inheritance impressed with the obligation on their part, and on the part of each of them, as hereinafter discussed, to pay any claim which might have accrued against the said ancestor during his lifetime. The amended complaint filed August 13, 1906 (R., 27), averred in paragraph one that all of the children of Mr. Ubarri, deceased, including the plaintiff in error, were subjects of the King of Spain; that Rufino Ubarri was absent from the Island of Porto Rico from 1899 to 1905; that Pablo Ubarri left Porto Rico in 1899 and has since resided in Barcelona, Spain; that the plaintiff in error and Modesta Ubarri have always resided in Spain. The complaint further shows in paragraph 2 that, at the time of the filing of the suit, the defendant in error, Maria Concepcion Graxiana Lopez, was still an infant and that the defendants in error, and each and every of them, were under the age of 21 years, "at the time the matters and things herein complained of were transacted, done and performed."

After having pleaded to the jurisdiction of the court on the ground that José Maria Ubarri was an indispensable

party defendant, and had not elected to preserve his allegiance to the crown of Spain on April 11, 1899, under the Treaty (R., p. 41), and after leave had been granted to strike out the name of said defendant José, and the plea had been overruled (R., p. 43), the plaintiff in error, on November 14, 1906, filed his separate answer under the name of Ventura Ubarri (R., p. 52). By this answer (paragraph one), he admitted the aforementioned averments of the first and second paragraphs of the complaint, denied the averments of fraud alleged against his ancestor; and, without making any averments with respect to the time at which the defendants in error, or any of them, became of age or otherwise avoiding the averments contained in the first and second paragraphs of the amended complaint, pleaded certain statutes of limitation in the following language, to wit:

"XXI. This defendant further alleges that the cause of action of the above plaintiffs is barred by virtue of the prescriptions of Sections 1862 and 1865 and subdivision 2 of Section 1869 of the actual Civil Code of Porto Rico, corresponding to Sections 1961 and 1964 and to subdivision 2 of Section 1968 of the old Civil Code of Porto Rico."

Neither by demurrer nor in the answer itself was any objection raised by the plaintiff in error to the form or sufficiency of the averments of the amended complaint.

On April 2, 1907, after the complaint had been dismissed as to all of the other defendants, the plaintiff in error (R., p. 62) submitted a motion to dismiss, "for lack of indispensable parties, since it appears of record that *all of the other defendants composing the said succesion of Pablo Ubarri have been dismissed* from said cause because of one cause or other whereby this court has no jurisdiction over them."

Thereafter, on April 15, 1907, the defendants in error filed an amendment to the complaint, making more specific his averments in paragraph one of his amended complaint, and specifically invoking sections 1859 *et seq.* of the Civil

Code and section 39 of the present law of Civil Procedure, by adding to the first paragraph the further averment that:

"The said defendant Buenaventura Ubarri has not resided in the Island of Porto Rico to exceed the period of three years at any one time, or at different times all combined from the year 1889, the date of the year in which this action accrued, until the commencement thereof, or the present date.

"Whereupon complainants invoke sections 1859 *et seq.* Civil Code and also section 39 of the present law of Civil Procedure of Porto Rico, which exclude from the time of prescription the absence of the defendant from the Island of Porto Rico."

This amendment was made by leave of court, subject to any objection which the plaintiff in error may desire to make during the progress of the trial of the action, and thereupon the motion to dismiss for lack of necessary parties was overruled, and both parties announced themselves ready for trial (R., p. 64). The case having gone to the jury on its merits and judgment having been rendered for the defendants in error, based upon the aforementioned verdict of the jury, the plaintiff in error has brought the case to this court on a writ of error.

There are twenty-four assignments of error, but in their last analysis they involve substantially but three main propositions, namely:

First. That the other members of the sucesion of the father of the plaintiff in error were indispensable parties.

Second. That the action was barred by the statute of limitations.

Third. That the father of plaintiff in error did not commit the fraud or violate the obligations charged in the complaint.

ARGUMENT.

I.

In the outset of the argument, it is deemed not inappropriate to call attention to certain provisions of the statutes under which the procedure in this case in the court below was governed and controlled.

By the Judiciary Act (sec. 914, U. S. Revised Statutes,) it is provided that:

"The practice, pleadings, and forms and modes of proceeding in civil causes, other than equity and admiralty causes, in the circuit and district courts, shall conform, as near as may be, to the practice, pleadings, and forms and modes of proceeding existing at the time in like causes in the courts of record of the State within which such circuit or district courts are held, any rule of court to the contrary notwithstanding."

This being an action at law the practice, pleadings, and forms and modes of proceeding in the United States Court for the District of Porto Rico was governed by the Code of Civil Procedure of Porto Rico, approved March 10, 1904. Chapter II, embracing sections 102 to 104, both inclusive, relates to complaints, chapter III to demurrers and chapter IV to answers. Chapter III, section 4, subsections 1 to 7, indicate defenses which should be raised by demurrer as follows:

"1. That the court has no jurisdiction of the person of the defendant, or the subject of the action; or,

"2. That the plaintiff has not legal capacity to sue; or,

"3. That there is another action pending between the same parties for the same cause; or,

"4. That there is a defect or misjoinder of parties plaintiff or defendant; or,

"5. That several causes of action have been improperly united; or,

"6. That the complaint does not state facts sufficient to constitute a cause of action; or,

"7. That the complaint is ambiguous, unintelligible, or uncertain."

Chapter VII, embracing sections 122 to 135, inclusive, specifies certain "general rules of pleading," and sections 122, 128, and 132 thereof read as follows:

"SECTION 122. In the construction of a pleading, for the purpose of determining its effect, its allegations must be liberally construed, with a view to substantial justice between the parties."

"SECTION 128. In pleading the statute of limitations, it is not necessary to state the facts showing the defense, but it may be stated generally that the cause of action is barred by the provisions of law (giving the number of the section and subdivision thereof, if so divided, relied upon); and if such allegation be controverted, *the party pleading must establish, on the trial, the facts showing that the cause of action is so barred.*" (Italics supplied.)

"SECTION 132. Every material allegation of the complaint, not controverted by the answer, must, for the purpose of the action, be taken as true; the statement of any new matter in the answer, in avoidance or constituting a defense or counter-claim, must, on the trial, *be deemed controverted* by the opposite party. (Italics supplied.)

From the portions of the statute quoted it will be observed that, in the absence of demurrer on the part of the plaintiff in error, his failure to raise before or by answer any objection to the form or sufficiency of the complaint, the capacity of the parties plaintiff thereto to sue, or alleged misjoinder of parties plaintiff, all possible questions of that character are eliminated from the case as now presented. His appearing in the case and submitting his answer waived all question as to the jurisdiction of the court over his person. Furthermore, while his plea of the statute of limitations, contained in paragraph 21 of the answer, was possibly in due form, under said section 132, the same was, in contemplation

of law, controverted by the defendants in error, and it was encumbent upon him, under said section 128, to "establish, on the trial, the facts showing that the cause of action is so barred."

Assuming that the question of indispensable parties has been properly raised, so that the jurisdiction of the court is involved, we pass to a consideration of that question.

II.

JURISDICTION OF COURT BELOW.

The jurisdiction of the court below is sought to be avoided on the ground that the action could not be maintained against the plaintiff in error alone as a member of the succession of Pablo Ubarri, deceased. This proposition is first raised by motion to dismiss for want of indispensable parties made by plaintiff in error on April 8, 1907 (R., 62), in which he averred that "all other defendants composing the said succession of Pablo Ubarri have been dismissed from the said cause because of one cause or other whereby this court has no jurisdiction over them," which motion was overruled by the court April 15, 1907 (R., 64).

The assignments of error involving the question of indispensable parties, in one form or another, are the first, second, side-paragraphs (c), (d), and (e) of the fifth, twelfth, fourteenth, fifteenth, sixteenth, eighteenth, twenty-third, and twenty-fourth assignments of error, some of which assignments, in so far as they are joined with other phases of the case, will probably be abandoned by counsel for defendants in error in their brief when completed.

It is understood that plaintiff in error will contend in this court that the leave of court obtained September 11, 1906 (R., 43), to strike "out the name of Jose Maria Ubarri as party defendant to this suit" was never exercised, and that therefore the action survived as against said original party

defendant, as well as plaintiff in error, and that counsel for plaintiff in error will argue from this erroneous contention that the court below did not have jurisdiction of the action. This contention is not well founded in fact, and is diametrically opposed to the statement contained in said motion of plaintiff in error, made April 2, 1907 (R., 62), paragraph (c), of the motion of plaintiff in error for peremptory verdict (R., 136), and several of the assignments of error, including sub-paragraph (c) of his fifth assignment of error (R., 73), which reads as follows:

"(c) Because of the lack of indispensable parties, to-wit: Pablo Ubarri e Yramategui, Modesta Ubarri e Yramategui, Rufino Ubarri e Yramategui, and *Jose Maria Ubarri e Yramategui*, who together with defendant constitute the succession of the estate of Pablo Ubarri y Capetillo."

The court in his charge to the jury, on this point, said (R., 149):

"Although the suit was originally brought against Pablo Ubarri e Yramategui, Rufino Ubarri e Yramategui, Jose Maria Ubarri e Yramategui, Buenaventura Ubarri e Yramategui and Modesto Ubarri e Yramategui, as the Succession of the said Pablo Ubarri, *all of the defendants save Buenaventura Ubarri were either not served, or, after being served, were dismissed from the cause through our legal pleading or another.*"

The defendant in error did not except to this part of the charge, either in his exceptions submitted before or after the jury retired. On the contrary, in that part of their exceptions submitted after the jury retired, they charge (R., 152):

"That the court erred in referring to *these* defendants, since there is but one defendant, Buenaventura Ubarri before the court."

The only question of jurisdiction, therefore, which was or could have been urged in the court below, is that of the contention of plaintiff in error to the effect that the action

could not be maintained against him alone
the succession of Pablo Ubarri, deceased, an
other members of the succession of Pablo U
pensable parties defendant in the court belo

Before passing to a discussion of those ass
filed in the court below (R., 73 to 76), inv
in whole this question of jurisdiction, it i
to quote the chapter of the Porto Rico law
general provisions on the subject of succes

"SUCESION."

The general provisions of the Civil Code
respect to successions (sucesion) will be her
convenience of the court.

The statutory definitions begin with se
Code of Porto Rico, title 3, and are found i
669, with their subdivisions, all inclusive,

"SECTION 661*a*. Succession is the tra
rights and obligations of a deceased person

"SECTION 661*b*. Succession also means
rights and charges which a person leaves
whether the property exceeds the charges o
ceed the property, or whether the said p
charges and no property.

"SECTION 661*c*. Succession includes not
and obligations of the deceased, in the co
they existed at the time of his death, but i
property belonging to such succession a
opened, and the charges and obligations inh

"SECTION 661*d*. Succession also signifie
of which an heir may take possession of th
deceased in accordance with law.

"SECTION 665. The rights to the succes
are transmitted from the moment of his de

"SECTION 666. Succession is granted eit
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"The first is called testamentary, the second legal succession.

"It may also be bestowed partly by will of man and partly by provision of law.

"SECTION 666*a*. Testamentary succession is that which results from the institution of any heir or heirs contained in a will executed in accordance with law.

"SECTION 666*b*. Legitimate or lawful succession is that which the law has established in favor of the nearest relatives of the deceased.

"SECTION 666*c*. Irregular succession is that established by law in favor of certain persons or of the people of Porto Rico in the absence of legal heirs or those instituted by will.

"SECTION 667. The inheritance includes all the property, rights, *and obligations* of a person, which are not extinguished by his death.

"SECTION 668. An heir is a person succeeding under an universal title; and a legatee one succeeding under a special title.

"SECTION 669. Heirs succeed the deceased in all his rights and obligations by the mere fact of his death."

ASSIGNMENT OF ERRORS I AND II.

The first assignment (R., 72), erroneously states that there was a demurrer filed on behalf of the plaintiff in error, and is presumed to relate to the aforementioned plea to the jurisdiction (R., 62). In this view, it involves practically the same question of jurisdiction as that set forth in the second assignment of error, which will be discussed below in connection with those parts of the fifth assignment of error which raised this question of indispensable parties.

ASSIGNMENT OF ERROR V, DIVISION (C).

"*Because this Defendant is Only One of the Heirs and there is Nothing in the Evidence Showing How a Judgment Should be Apportioned, or that the Defendant is Liable in Solido.*"

Section 1051 of the Civil Code of Porto Rico (section 1084 of the Civil Code of Spain) is as follows:

"After the division has been made the creditors may demand the payment of their debt in full of any of the heirs who may not have accepted the inheritance under the benefit of inventory, or up to the amount of their hereditary share in case they have accepted it under such benefit."

(Jose Maria Manresa y Navarro, Vocal of his Section of the Code Commission, and Pensioned Magistrate of the Supreme Court of Spain, is perhaps the best authority as an interpreter of this Code.) Commenting on section 1084 of the Spanish Code, literally the same as section 1051 of the Civil Code of Porto Rico above quoted, Manresa says:

"There were two things that could have been done: To divide the claims or obligations among the heirs in proportion to their share or interest in the estate, the system followed in Italy, France and Chile; or, to consider these claims or obligations as indivisible, holding them good in their entirety against all, or each of the heirs.

"If the heirs to an estate should be by half, the obligations among them shall be allotted by half, and neither one can compel the other to pay the debts in their entirety unless so provided by the testator, and if he should pay them, he would have the right to make the other heirs pay their share.

"Whether one or several (the heirs) their right to inherit goes only as far as the balance of the estate after deducting the debts."

Such are the comments made by this distinguished author, on the proceedings in Italy, France, and Chile. Passing to our own Code he says:

"Our Code has adopted the resolution least in conflict with the judicial principles, since it does not change the right of the creditors, permitting them to bring their claims against the heir which offers the best chance to collect the debt.

"The creditor can always claim the whole of his credit, within the limits provided in the law, in the case of those who accept under the inventory, from any of the heirs.

"Whether one, or many, the heirs, the creditor may select, we may say, from any of them, bring his claims against any

of them, or against those who offer the best chance for collection."

Manresa, vol. VII, pages 747-753.

This interpretation is also sustained by the decision of the Supreme Court of Spain of the 3d of April, 1903:

"Whereas, according to the provisions of section 1084 of the Civil Code (Spanish, 1051, P. R. Code) as it was declared by a recent decision (see decision of the 9th of January, 1901, the Civil Code by Martinez, apendice, 1900, 1901, page 347), that each one of the heirs is responsible *in solidum* (solidariamento) for the debts of the inheritance, and by virtue thereof, whether or not the partition of the estate inherited has been effected by the property debtors * * * action may have been directed against the defendant in his capacity as heir of the three persons from whom the inheritance is had, and at the same time, as possessor of the property mortgaged, which, if it belonged to an undivided inheritance, Don Agustin Verges had a right as against his co-participants in this succession to have them summoned and impleaded; but such omission does not affect the complaint."

We must not confound the rights of the recognized creditors, as provided in section 1028 of the Civil Code of Spain (1049, P. R. Code), with the rights of the creditors, as provided in section 1084 (1051 of the Porto Rico Code). The first section refers to creditors whose claims are recognized either judicially or because they have been expressly admitted by the heirs. To the former—that is, those whose claims have been recognized—section 1082 (1049 of Porto Rico Code) give them the right to oppose any partition until their claims are paid or guaranteed. And these, as well as those mentioned in section 1084 (1051 of the Porto Rico Code), retain the right to sue any of the heirs for the whole amount of the claim, unless the person sued should have accepted the inheritance under the benefit of an inventory, in which case he shall be liable to pay the full amount inherited (pages 112 and 153 of the Civil Code, interpreted by the Supreme Court by Antonio Martinez Ruiz, Vol 6).

Confining ourselves now to that which relates to the payment of the hereditary debts, we have, then, that to the creditors of the testator, it matters little how many heirs there may be; nor does it affect the creditors what agreement the heirs may make between themselves nor the legacies made by the testator if they have not given their consent. The creditors may attack one or more of the heirs, demanding payment from whomsoever seems to offer the most security for the success of the action and the payment of the debt.

The distinguished professor of civil law in the University of Barcelona, Spain, Don Modesto Falcon, in his Doctrinal Treatise on the Spanish Civil Law (Code and Statute), 4th edition, 3d Vol., page 420, No. 2, expresses himself thus respecting the joint responsibility of the heirs and the range of article 1084, or 1051 of our Code:

"If the division of the property is made and the debts are not satisfied, each creditor of the hereditary capital has an action against whichever of the heirs by reason of the right of action which he has against the whole estate, to force the payment of his claim. Whichever co-heir against whom the creditor directs his action, must pay the debt even if it takes his own private property so to do, if he accepts the estate without the formality of an inventory.

"There is but one way to free himself from these responsibilities and that is to pay the debts before proceeding to sell off and divide the patrimony. Not to proceed in this manner, all of the heirs are joint debtors of the creditors and here enters the right which assists the creditors to take action against whichsoever of the heirs is likely to bring the best results."

Article 1144 of the old Spanish Code, which is article 1111 of the Revised Code of Porto Rico, is taken from law 8, chap. 12, part 5, which says:

"The creditor may take action against any one of the joint debtors or against all at the same time."

Article 1141, condensed from the old Civil Code, which is literally 1108 of our Code, is taken from law 10, chap. 1, book 10, of the new Collection and law 8, chap. 12, part 5, which says:

"The right of action exercised against any one of the joint debtors, prejudices all."

Senor Manresa expounds thus, with reference to article 1144, of the old Civil Code, or 1111 of the Civil Code of Porto Rico:

"In regard to the right of the creditor to claim payment from all and each one of the joint debtors, the text of this article leaves no doubt. In the most ample power which is given the creditor, he is authorized to attempt to claim against any debtor, even after he has brought action against one of the debtors, and meanwhile this first action has not been terminated, and the effectiveness of his right has not been declared. And it is notable that in this last case the creditor has the assistance of article 1252. And it must be borne in mind that the creditor may also proceed against all debtors when the failure to collect from one has resulted from the poverty of the debtor assailed; but no new action will be considered which may have been rejected by the court in prior actions."

In the sentence of the Supreme Court of Spain of the 13th of November, 1895, it is declared that any one of the co-heirs has the right, separately, to answer the complaint by which the right of payment of debt against the whole estate is claimed. In this decision it appears that a hereditary creditor established execution against one single co-heir of Dona Saturnina Gonzales Urbaneja in payment of a debt admitted by her in her will, and the entire estate, affecting the property of all the heirs, was levied upon, although the testamentary division had been made and the property was already recorded in the name of the five heirs composing the line of descent. The defendant made a motion to annul the judgment, because the remainder of the heirs had not been

cited together with the defendant, and the Court of First Instance, the Appellate Court of Havana, and the Supreme Court of Spain, in perfect accord, and founding their action upon Art. 1084 of the Civil Code of Spain (1051 of the Revised Code of Porto Rico), declared that the defendant, being a legal respondent of the testator, and since it behooved him to summon all the co-heirs in defense, that the law had not been infringed upon, and, therefore—

"That an execution may be levied against whichever of the co-heirs as a joint debtor, and that the entire debt could be collected even against all the property of the entire estate.

"The co-heir who accepts the bequest without the benefit of an inventory absolutely merges his own private property and his own personality with the property which he accepts from the testator and the consequent payment of the hereditary debts which the testator may have had."

The case of Salvador Oliva (as heir of his sister) against Eusebio Clavell and others, decided by the Supreme Court of Spain on — day of ——, 18—, was a suit begun in Barcelona, Spain, by Salvador Oliva, as heir of his sister, Mrs. Nicaela Oliva de Clanvell against Eusebio Clavell and his wife, Mrs. Josefa Arriera, residents of Barcelona, and Angela Furolet, resident of Habana, Cuba. The property of the defendants was in Barcelona. Angela Furolet was served in Habana by the "Alcalde Mayor" — a sort of court. She presented a motion alleging that the action was a personal one, and that the court could not cite her on the theory that it was not a suit against the property but a personal one. The court held, as is seen by the following opinion, that the action was a mixed one.

The debt—for which suit was instituted to recover—originated in the following manner:

One Jaime Clavell died leaving his property to the defendants above mentioned, two residing in Barcelona and the other in Habana as above said. The wife of the deceased, who survived him, alleging that her husband died owing

her a certain sum of money, brought the suit above mentioned against the three heirs above mentioned for the recovery of the same. As above shown, the suit was not brought by the wife mentioned, but after her death by her brother and heir.

The court decided that Dona Angela Furolet having, as stated, been summoned to appear in the city of Habana of the 8th day of June, 1870, she presented a document on the 17th idem to the mayor, alleging that the actions being brought against her were of a purely personal nature; that the same should be brought against the heirs or their representatives, independently of their effects, which, in ultimate event should be made, in general, part of the claim, should this latter be declared to exist, but that there should be no single thing or object specially designated nor any special mortgage to guarantee the pact; and that, there being no contract designating any fixed or definite place where to demand fulfillment of the obligation, the complaint should be made within the sphere of the domicile of the defendant, and asked that the Judge of Barcelona should declare himself incompetent to try the case that Don Salvador Oliva wished to bring against Dona Angela Furolet as specified legatee of Dona Jaime Clavell; and that he should refer all judicial steps taken in the suit and cite the claimant to appear in Habana, the place of residence of the defendant, there to bring action, failing which she would bring action to establish competency, in support of which the Mayor of Habana sent a corresponding prohibitory order to the Judge of Barcelona.

Decision 3 of the sentence of the Supreme Court of Spain of June 17, 1872, page 666, Tomo 25, says: "That if, according to the text of the said laws" (referring to Law 7, title VI of Partida 6a), "the obligations of the heir as well as of the legatee originated from the legacy they inherited and the debts have to be paid therefrom, it is evident that the action on the part of the creditors for debts left by the

testator is MIXED or JOINT in so far as refers to the heirs and legatees and must be paid out of the inheritance, for which reason it would be according to the volition of the creditor to bring action before the judge of the place of residency of the debtor or before the judge of the place where the effects corresponding to the inheritance were located" (Art. 5, Par. 4, Law of Civil Procedure, article 62).

Art. 1023 of the Old Civil Code, which corresponds to 989 of our Code, carries the same doctrine.

We believe we have conclusively shown that the defendant was liable in *solido*. We do not actually understand what counsel means by the statement (in assignment V (C), R., 73), that, "there is nothing in the evidence showing how the judgment should be apportioned," because if it is meant that there is nothing to show how a judgment should be apportioned among the defendants in error, then the objection is already met by that portion of the record which gives the testamentary proceedings and shows that the heirs of Jacinto Lopez are to share and share alike. If it is intended to say that there is no evidence showing how a judgment should be divided among the heirs of Pablo Ubarri, then from that side we have shown that it is a matter that does not concern the defendants in error, nor at this time the court, as if one heir shall pay more than any other of his co-heirs, it devolves upon the heir making the payment to see to it that his co-heirs share equally with him the burden of the debt.

ASSIGNMENT OF ERROR V, SUBDIVISION (D).

"Because the Cause of Action Set Forth, and which the Evidence Tends to Prove Does Not Survive as Against the Heirs, or Against this Defendant."

It is the contention of defendant in error that the heirs represent their predecessors in the ownership of the estate to the extent that in law they are one and the self-same persons.

"The heir represents the person of the deceased, and even both may be considered the self-same person. According to right, says Law 13, Chapter 9, Part 7, the heir is counted as one person with him from whom he inherits."

Escriche, Dictionary, 5 Heir.

Section 667 of the Civil Code of Porto Rico is as follows:

"The inheritance includes all the property, rights and obligations of a person, which are not extinguished by his death."

Section 669:

"The heirs succeed the deceased in all his rights and obligations by the mere fact of his death."

As to these sections Manresa declares, upon the authority of the Supreme Court of Spain, the doctrine that the inheritance of a deceased is what remains after paying all the debts and responsibilities of the same.

Manresa, Vol. 5, page 305.

Continuing: Its responsibilities are understood to be all those springing from fault or negligence of the testator, or obligation to pay the same passing over to the heirs.

The action to recover, for instance, exercised by means of an injunction to recover, lie as against the heirs of deceased (despojante) provided that said action has not prescribed, not only for the purpose of recovery of the thing, but also for the payment of costs, damages and restoration of products to which the persons at fault must be sentenced according to law.

All these responsibilities, and all analogous ones, belong to the obligations that are a part of the inheritance, and to which the section that we are commenting upon refers, and which, in harmony with the Spanish legislation and the majority of the Codes (meaning the Civil Law Codes), consider the hereditary patrimony as an entirety or whole that passes over to the heirs by the will of the testator or by the authority of the law.

This is true because either one of the heirs is liable for a whole obligation, the settlement between the heirs being a matter that concerns themselves alone.

Section 1051, Civil Code of Porto Rico.

This action was brought and tried in the lower court entirely upon the conceived right of the defendants in error as those rights existed and accrued under the laws of Porto Rico. Neither at the trial of the cause in the lower court nor in its presentation to this honorable court have we relied upon the laws of the United States governing the rights of property. However, we beg to call the attention of the court to the case of the United States *vs.* Daniels Executors, 6 Howard, page 13, from which we take the following extract:

"If the person charged has secured no benefit to himself at the expense of the sufferer, the cause of action is said not to survive; but where, by means of the offense, property is acquired which benefits the testator, there an action for the value of the property shall survive against the executor."

The only purpose in citing this case decided by this court is to call attention to the fact that the principle obtains here that was invoked by us in Porto Rico, and, as we shall show by numerous citations, seems to be the well-established principle in all countries. It may be briefly and simply restated in this form: If the estate has benefited by the act of the deceased, then the heirs, or the property of the deceased, is liable for such act.

The subject is further discussed by Manresa at Vol. 5, page 307, Art. 659.

Heirs succeed to all right and obligations by the fact of death.

Art. 661, Vol. 5, Manresa.

INDISPENSABLE PARTIES.

ASSIGNMENT OF ERROR V, SUBDIVISION (E).

"Because of the Lack of Indispensable Parties, To wit: Pablo Ubarri é Yramategui, Modesta Ubarri é Yramategui, Rufino Ubarri é Yramategui, and José Maria Ubarri é Yramategui, Who, Together with Defendant (Plaintiff in Error), Constitute the Succession of the Estate of Pablo Ubarri y Capetillo."

It has already been shown that a creditor of any succession may present his claim against any, or all of the heirs as he may elect, or as the probability of collecting his claim may present itself. We are dealing with the property of the succession, not with the property of the heirs in this case. We shall later present the statute governing the liability of heirs who inherit with or without the benefit of inventory. In this case the question has not arisen except under an objection, and an exception taken to the ruling of the court. That exception may be considered in its proper place, although it is not designated in the assignment of errors. If we may proceed against each, or any, or all of the heirs individually or collectively, as we may see fit, then no one member of the succession is an indispensable party. Upon the other hand we have shown (Decision of the Supreme Court of Spain of Nov. 13, 1895) that any member of the succession may make a defense to an action brought against it. He may summons his co-heirs, but whether he does or not it is his concern and not the responsibility of the creditor that governs his action. If the law shall adjudge him to pay, as a member of the succession, then it is the succession itself against which the judgment runs, and if the individual member, who is made a defendant, is under those conditions compelled to pay then he may, by the law, as we have cited it, compel his co-heirs to join him in carrying the

burden. In this case it would simply mean, as is shown by the record, that the defendant must look to his co-heirs residing with him in Spain, for their share of the liability created by this judgment, rather than that we shall be obliged to follow them to Spain to litigate with each one of them, or any of them, our rights in the premises. It may not be out of place, and certainly will be convenient, for us to present section 1051 of the Civil Code of Porto Rico (1084 Spanish Code) in connection with this thought.

"SECTION 1051. After the division has been made the creditors may demand the payment of their debts in full of any of the heirs who may not have accepted the inheritance under the benefit of inventory, or up to the amount of their hereditary share in case they have accepted it under such benefit."

We present the following rule, found at section 194, vol. 1, Bates' Equity Procedure, which states clearly and distinctly the relation of parties to a case in a United States Court as affecting its jurisdiction. These parties are divided into three classes: (1) Formal parties, (2) necessary parties, (3) indispensable parties. By the language used it is plain to see that the indispensable party only is the one which will take from a court its jurisdiction.

Because of the statute above quoted and the numerous authorities we have submitted in support thereof, we believe that the rule above presented from Bates applies to the case at bar, and that as we may of right proceed against any member of the succession Ubarri, no other member of that succession is an indispensable party.

Assignment of Error XII.

"Because the Court Erred in Refusing Instruction No. 7 of Defendant (in Error), as Follows:

"Such Damages as the Jury Find for Cause to These Plaintiffs (Defendants in Error), if They Find Such to be the Case, Shall be Assessed to the Defendant Only on One-fifth (1-5) Thereof."

This assignment of error is a restatement of that which has become an important question in this discussion, in that it is another form of saying that an action against one member of the succession is absolutely personal to that member, even though sued as a member of the succession with a judgment asked against the succession. We think that question has been already covered and may have another answer; but it will be discussed further in presenting the plaintiffs' side of the case.

Assignment of Error XIV.

Inheritance With or Without Inventory.

A question is raised as to the instruction given by the court on the subject of inheritance without benefit of inventory. We doubt if the objection was not interposed too late to be considered by this court under its well-known ruling to the effect that exceptions to the instructions must be presented before the court gives the case to the jury. At page 151 of the Transcript of Record, folio 255, the record says:

"At the close of the charge of the court, counsel for the defendant noted an objection and exception to all the charge of the court, *for the reason heretofore assigned in the motion to dismiss,* and for a peremptory charge upon this point."

It appears this exception to the charge was taken in time.

We then find the following additional sentence to the paragraph above quoted—

"And later filed the following exceptions."

We understand the rule to be that exceptions filed under the last sentence above quoted are too late, as the case is already under consideration by the jury, and the court has already submitted its charge.

Be that as it may, however, we will discuss the question of the inventory statute and its effect upon this case, as well as the ruling of the court upon this subject.

This seems to us to be the logical place for the presentation of that question. Upon the exception stated the court used the following language (R., 149-150), to wit:

"As it is presumed, because defendants have not shown the contrary, that these defendants, heirs, took the estate of their father, the said Pablo Ubarri y Capetillo, without benefit of inventory, and hence became liable for all the debts which that estate owed, and therefore service upon one of them is sufficient to authorize the court to give a judgment against the succession for whatever amount, if any, you may, in your discretion, find to be due."

The statutes of Porto Rico, defining the effect of receiving an estate with or without inventory, are as follows:

"ART. 1003. Through an acceptance, pure and simple, or without benefit of inventory, the heir shall be liable for all the charges on the estate, not only with the property of the same, but also with his own."

Inheritance with the benefit of inventory, produces the following effect in favor of the heir:

"SEC. 1023. The heir shall not be bound to pay the debts and other charges on the inheritance except in so far as the property of the same may go.

"2. He retains against the estate all the rights and actions which he may have had against the deceased.

"3. His private property shall not be confused for any purpose whatsoever, to his injury, with the property belonging to the estate."

We again cite the Supreme Court of Spain in support of the above instructions of the court, and against the contention of the plaintiff in error.

Decision of 13th of November, 1895.

This decision not only asserts the doctrine laid down by the court, but avers the right of any member of the succession to defend the interests of the latter, which in this case the plaintiff in error did.

Manresa, at vol. 5, page 329, says:

"However, the judgment of March 2, 1896, says that taking as a basis that there cannot be any benefits running to the inheritance while there are standing debts against the succession, and also that the *renunciation of the inheritance was not claimed or proved by the heirs sued for payment* the decision was sustained by which the heirs are compelled to pay."

The same author reiterates the doctrine at vol. 12, page 892, of the same work.

Indeed there can be but one action against a succession as it would manifestly be in violation of the jurisprudence of any country to permit the same person to sue each one of the heirs to recover, not what either of the heirs owe, but a charge against the estate.

Manresa, vol. 8, page 200.

Assignment of Error XV.

"The court erred in referring in its said charge to 'these defendants,' there being but one defendant, Buenaventura Ubarri, before the court at the time of the trial, the court

having no jurisdiction over the persons of the other heirs of Pablo Ubarri y Capetillo, and they were not parties to this cause at the time of the trial thereof" (R., 75).

This assignment is based upon one of the objections which was submitted (R., 151-153) after the jury retired, and, therefore, too late even if well founded, which is denied.

It is submitted, however, that the language used by the court in his charge (R., 149-151) made it clear that the action had been dismissed as against all of the defendants except the plaintiff in error, over whom the court alone had personal jurisdiction at the time of the trial, the language of the court being as follows:

"Although the suit was originally brought against Pablo Ubarri e Yramategui, Rufino Ubarri e Yramategui, José Maria Ubarri e Yramategui, Buenaventura Ubarri e Yramategui and Modesta Ubarri e Yramategui, as the succession of the said Pablo Ubarri, *all of the defendants save Buenaventura Ubarri were either not served, or, after being served, were dismissed from the cause through one legal pleading or another*, but the court instructs you, as it has presumed, because defendants have not shown the contrary, that these defendant heirs took the estate of their father, the said Pablo Ubarri y Capetillo, without benefit of inventory, and hence became liable for all the debts which that estate owed, and therefore service upon one of them is sufficient to authorize the court to give a judgment against the succession for whatever amount, if any, you may, in your discretion, find to be due."

The principle of law involved in the last part of the quotation from the court has been sufficiently presented above.

Assignment of Error XVI.

"The court erred in submitting, by its charge to the jury, the case upon the theory that defendant, Buenaventura Ubarri, was liable for the whole amount of damages claimed, or the liability, if any, of the succession, or of all of the

heirs of Pablo Ubarri Capetillo, because of the matters and facts set forth in the complaint."

This assignment is also based upon an objection raised after the jury had retired, and the language of the court on which the objection as raised therein is quoted above in connection with assignment of error XV, and the principle of law involved has been sufficiently argued above under this section of the brief.

Assignments of Error XXIII and XXIV.

The points involved in these assignments, appropriate to this branch of the brief, have been fully argued above.

It is submitted, therefore, that the action was properly sustained against the plaintiff in error as of the succession of his father; that the court made no reversible error in its rulings and charge in this regard, and that the judgment entered, based upon the verdict of the jury rendered, was proper and should be sustained.

III.

Statute of Limitations.

The defense of limitations is set up in the twenty-first paragraph of the answer of the plaintiff in error (R., 55) as follows:

"This defendant further alleges that the cause of action of the above plaintiffs is barred by virtue of the prescriptions of sections 1862 and 1865 and subdivision 2 of section 1869 of the actual Civil Code of Porto Rico, corresponding to sections 1961 and 1964 and to subdivision 2 of section 1968 of the Old Civil Code of Porto Rico."

Sections 1862 and 1865 read as follows:

"Section 1862. (Art. 1961, Code of 1889.) Actions are prescribed by the mere lapse of time specified by law."

"SECTION 1865. (Art. 1964, Code of 1889.) A mortgage action prescribes after twenty years, and those which are personal and for which no special term of prescription is fixed, after fifteen years."

The Code of 1889, which was promulgated by royal decree of July 31, 1889, and went into force January 1, 1890, contained a qualifying provision, as follows:

"Art. 1939. Prescription, which began to run before the publication of this Code, shall be governed by the prior laws; but if, after this Code became operative, all the time required in the same for prescription has elapsed, it shall be effectual, even if according to said prior laws a longer period of time may be required."

This provision was considered and construed by this court in the case of Royal Insurance Company *vs.* Miller (199 U. S., 353, 366-368), Mr. Justice White delivering the opinion of the court. This court found, upon Spanish authorities cited in the decision, that the limitation of personal actions, prior to the Code of 1889, was twenty years.

In arriving at a conclusion with regard to what the period of limitations was on personal actions prior to the Civil Code of 1889, which went in force January 1, 1890, Mr. Justice White, in this case, said:

"As the fifteen years fixed by the Code for the bringing of personal actions had not elapsed between the promulgation of the Code and the bringing of this action, it follows that the controversy was not within the terms of the proviso, and therefore the limitation of the cause of action is to be determined, not by the Code provision fixing fifteen years, but by the prior law. What was the term of prescription of personal actions under the prior law is, therefore, the question.

"In the absence of express legislation concerning Porto Rico, what was the prior law applicable to the Island concerning the limitations of personal actions, must be fixed by ascertaining the period of prescription for personal actions generally prevailing under the Spanish law. Schmidt, Civil Law of Spain and Mexico, p. 35. Whilst the general Span-

ish law, prior to the promulgation of the Civil Code, is to be derived from a review of the successive Spanish Codes, nevertheless the Spanish law prevailing prior to the Code is primarily to be found in the Code known as the Novisima Recopilacion.

"By Law 5, Title VIII, Book 11, of the Novisima Recopilacion, it appears that the term of prescription of personal actions was twenty years. White, New Recopilacion, Vol. 1, p. 96. And from an edition of the Spanish Codes, with concordance and notes, published at Madrid in 1850, under the text of the Novisima Recopilacion in question (Vol. 9, p. 458), it appears that the limitation of twenty years as to personal actions, as expressed in the text of the Recopilacion, prevailed as early as 1348, in the Code known as the Ordenamiento de Alcala.

"Moreover, the Supreme Court of Spain has held, in repeated decisions, that the provision found in the Novisima Recopilacion, above alluded to, was the general law of Spain on the subject, in force prior to the adoption of the Civil Code, and that by that law the limitation of personal actions was twenty years. References to a Spanish publication, in which many such decisions are reported, are given in the margin."

In that case, as in the case at bar, there was involved a personal action which had accrued prior to the Code of 1889. Action was not brought until 1902, about seventeen years after the right had accrued in 1885, but before fifteen years from the time the fifteen-year limitation of the Code of 1889 went into effect on January 1, 1890. This court held that the action was not barred, but was governed by the twenty-year limitation which existed, as in the case at bar, when the right of action accrued.

The difference between the Royal Insurance Company case and the case at bar, so far as the application of the fifteen-year bar is concerned, is that a little over fifteen years had elapsed between the time the Code of 1889 went in force, on January 1, 1890, and the institution of this action, June 6, 1906 (R., 1).

The defenses of the plaintiff in error to the running of

this statute, which it is contended that it was encumbent upon the plaintiff in error to have met by proof to the contrary, were two-fold, namely:

(A) Because of the minority of the defendants in error, and

(B) Because of the absence from Porto Rico of members of the succession of Pablo Ubarri, deceased, including the plaintiff in error.

The plaintiff in error, in his brief before this court, will rely upon section 1833 of the present Civil Code, corresponding with article 1932 of the Code of 1889, which reads as follows:

"Art. 1932. Rights and actions shall extinguish by prescription to the prejudice of all kinds of persons, including judicial persons, in the terms prescribed by law.

"Persons incapacitated to administer their property shall always retain the rights to sue their legal representatives whose negligence may have been the cause of the prescription."

The defendants in error contend that, even under said statute, the succession of Ubarri would be liable by reason of the fiduciary relation existing between him and the defendants in error while infants, and they further invoke against the plaintiff in error the following statutes, to wit:

The Civil Code of Porto Rico provides:

"SECTION 1859. For the purpose of prescription, a person who resides outside of Porto Rico, either in the United States, in foreign parts, or in any other point, shall be considered as absent."

"If said person who was present during a part of the time and absent during another part, every two years of absence shall be considered as one year, to complete the ten years of the time required to be present. Absence which is not for a whole and continuous year shall not be considered in the computation."

Civil Code of Procedure of Porto Rico:

"SECTION 39. If when the cause of action accrues against a person, he is out of the Island of Porto Rico, the action may be commenced within the term herein limited after his return to said Island, and if, after the cause of action accrues, he departs from said Island, the time of his absence is not part of the time limited for the commencement of the action.

"SECTION 40. If a person entitled to bring an action, other than for the recovery of real property, be at the time the cause of action accrued, either;

"1. Within the age of majority; or,

"2. Insane; or,

"3. Imprisoned on a criminal charge, or in execution under the sentence of a criminal court for a term less than for life; or,

"4. A married woman, and her husband be a necessary party with her in commencing such action;

"The time of such disability is not a part of the time limited for the commencement of the action."

The absences of members of the succession of Pablo Ubarri, including the plaintiff in error, and the infancy of all of the defendants in error at the time the action accrued, and of one of them at the time the suit was brought, was averred in the first and second paragraphs of the amended complaint, filed August 13, 1906 (R., 26), and was admitted in the first paragraph of the answer of the plaintiff in error thereto, filed November 14, 1906 (R., 52).

The plea of the statute of limitations contained in the answer being *"controverted,"* according to the principle of practice set forth in section 132 of the Porto Rican Code of Procedure of 1904, it was encumbent upon the plaintiff in error, under the latter part of section 128 of that Code of 1904, if he was to rely upon the statute of limitations above quoted, to "establish, on the trial, the facts showing that the cause of action is so barred," namely, that the defendants in error, and each of them, were twenty-one years of age January 1, 1890, and also that the facts in respect to the absences of members of the succession of Pablo Ubarri,

deceased, were such as not to have interrupted the running of the statute of limitations.

This, apparently, the plaintiff in error could not do, and he, therefore, practically abandoned his plea in this regard in the court below, and, as was done by the unsuccessful party in the case of Royal Insurance Company *vs.* Miller (*supra*), the plaintiff in error staked his whole case, so far as limitations were concerned, upon the application of the other statute which he pleaded, namely:

The One-year Statute.

The other provision referred to in the answer of plaintiff in error reads as follows:

"SECTION 1869 (Art. 1968, Code of 1889). The following prescribe in one year: * * *

"2. Actions to demand civil liability for grave insults or calumny, and for obligations arising from the fault or negligence mentioned in section 1803, from the time the aggrieved person had knowledge thereof."

Plaintiff in error did not prove lack of infancy or absence or show when the aggrieved persons and each of them acquired knowledge. The statute mentioned in the one-year provision reads as follows, to wit:

"Obligations which arise from fault or negligence—SECTION 1803. A person who by an act or omission causes damage to another when this is fault or negligence shall be obliged to repair the damage so done."

It is contended by the defendants in error that this action is not based upon section 1803, which is subject to the one-year limitation *from knowledge by the aggrieved*, but falls within the purview of section 1101 of the Spanish Code (1068 of the Porto Rico Code), which was subject to the twenty-year limitation of the Spanish law in force at the time the action accrued, February 19, 1889; and also that

the action was maintainable under the last subdivision of section 38, based upon section 36 of the Mortgage Law, and subject to the thirty-year limitation prescribed by that law.

Said section 1068 (sec. 1101 of the Spanish Code) reads as follows:

"SECTION 1068. Those who in fulfilling their obligations are guilty of fraud, negligence, or delay, and those who in any manner whatsoever act in contravention of the stipulations of the same, shall be subject to indemnity for the losses and damages caused thereby."

Article 36 and the last paragraph of article 38 of the Mortgage Law read as follows:

"Art. 36. Suits for rescission or determination of title shall not be instituted against third persons who have recorded the instruments of their respective interests in conformity with the provisions of this law."

"Art. 38. In consequence of the provisions of article 36, no instruments or contracts shall be annulled or rescinded to the prejudice of third persons who may have had their interests recorded for any of the following reasons: * * *

"In every case that the suit for rescission or determination of title can be instituted against the third person, in accordance with the provisions of this article, *the corresponding personal action* may be brought to recover from the person who may have been the cause thereof, indemnity for the injuries and damages suffered."

(Italics supplied.)

Before discussing the application of the Mortgage Law provisions, it is proposed to show that the action is not such as that contemplated by said section 1803, with the one-year limitation prescribed by section 1869, subsection 2, as contradistinguished from said section 1068.

The decision of the 13th of November, 1901, page 732, of the addenda for the years 1901 and 1902, Antonio Martinez Ruiz, in his Civil Code, says:

"SECTION 1902 (Spanish Code), 1803, of the Civil Code, is not applicable to cases of indemnity arising out of the performance of obligations."

According to the decision of the Supreme Court of Spain of the 19th of February, 1904, section 1101 of the Civil Code (Spanish), 1068 of the Porto Rico Code, is applicable in cases of damage arising from the failure to perform obligations. Page 198, for the year 1904, Arcubilla.

The decision of the same court of the 24th of June, 1904, holds that the damage arising from failure to perform obligations shall be governed by section 1101 of the Civil Code, section 1068, Code of Porto Rico, page 724, year 1904."—Arcubilla.

The decision of the same court of June 26, 1903, page 774, book 1903, holds that "the indemnity for damage arising from failure to perform an obligation is governed by section 1101 (Spanish), Civil Code of Porto Rico, section 1068."—Arcubilla.

The decision of the same court of June 25, 1902, page 829, book 1902, holds that section 1101 (1068, Porto Rico Code) subjects to the payment of damages those who in the performance of obligations should commit fraud (dolo), negligence, delay, and those who violate their provisions.—Arcubilla.

The decision of the same court of the 23d February, 1900, page 883, book 1900, decides:

"Whereas, according to section 1101 (Spanish Code), 1068 Porto Rico Code, whose violation is alleged in count 4 of the motion at bar, subject to the payment of indemnity for damage, not only those who in the performance of their obligations should commit fraud or negligence, but also those who in any manner should violate the provisions of said obligations."—Arcubilla.

Subsection 2 of section 1869, the one-year statute, has relation to "grave insults or calumny" and a class of actions "arising from the *fault* or *negligence mentioned in section 1803*." The title under which said section 1803 is found, namely, "obligations which arise from fault or negligence," and the language of the statute itself and its classification

among the Spanish statutes, show conclusively that it does not define the character of action involved in the complaint filed in this case. On the other hand, section 1068 of the Porto Rico Code clearly embraces the character of action complained of.

Ubarri, when he accepted the power of attorney from the mother of the plaintiff in error, who was the natural and legal representative of the defendants in error, assumed a sacred obligation which enured to the benefit of said infant defendants in error, which obligation the complaint avers, the evidence shows, and, in effect, the jury found, he violated.

MORTGAGE LAW.

It is also contended that the last subdivision of section 38 of the Mortgage Law embraces the cause of action in this case. Had this property not been sold defendants in error might have brought action in equity for the rescission of the sale and for an accounting of all differences between the two successions; but the Lopez property having passed into the hands of innocent third persons, the defendants in error were not permitted to pursue that remedy, or to in any manner look to the property, or a just portion of it, for the relief sought. The last subdivision of section 38 of the Mortgage Law, quoted above, provides that in such cases the party injured may bring a personal action for the recovery of the damage. Had the plaintiffs been permitted to pursue the land itself, or such portion of it as might justly remain after the payment of Ubarri's debts, and, of course equity would require such payment, then a right of action would not have been prescribed under thirty years, according to section 1864 of the Civil Code, which reads as follows:

"SEC. 1864. Real actions with regard to real property prescribe after thirty years."

To say that a substitute action for the loss of such a right would prescribe in one year is unreasonable in principle and

out of harmony with the Spanish law. By analogy, such action would not prescribe in less than thirty years, certainly not in less time than that prescribed in the twenty-year statute.

The contention of opposing counsel in this court that suit must actually have been brought before the Code of 1889 went into effect, January 1, 1890, is flatly met and decided adversely to this contention by this court in the case of Royal Insurance Company against Miller (*supra*), in which, although the suit had not been brought when the statute became effective, seventeen years had expired from the time the cause of action arose, the twenty-year statute was applied.

The contention of opposing counsel that section 40 of the present Code of Civil Procedure is inapplicable because the said Code did not become effective until 15 years after the Civil Code of 1889 went into effect, on January 1, 1890, is controverted by the fact that said Code of Civil Procedure went in force in 1904, less than fifteen years from January 1, 1890.

It is contended by plaintiff in error that the statute of 1890 changed the previous statute from a twenty-year to a fifteen-year limitation. If that is true, and the statute of limitation in force when this action accrued was replaced by a subsequent remedial statute, namely, the statute taking effect on the first of January, 1890, then it must be true that, the action having still been alive on March 10, 1904, when a new remedial statute was substituted for the statute of 1890, the remedial statute of 1904 became effective. If one remedial statute substituted the other January 1, 1890, then the statute of 1904 as irresistibly substituted the statute of 1890 as the statute of 1890 substituted prior remedial remedies. Besides this, a statute of limitation of action has to do with the remedy strictly, and the provisions of 1904 clearly changed the preexisting statutes in this regard. Wherefore the logical conclusion must follow

that both minority, as referred to in section 40, and absences from Porto Rico of the plaintiff in error and others of the succession of Ubarri, mentioned in section 39 of the Code of 1904, prevented the running of the statute of limitations, whether that statute, as applied to this case, be fifteen years or twenty years.

Furthermore, the contention of opposing counsel that by section 1859 of the Civil Code of 1889 infancy and absences could not interfere with the running of the statute of limitations, and that said section itself provided a remedy for the infants, to be exercised after becoming of age, against the person who was *sui juris* at the time and whose duty it was to protect their interests, we submit that under this last clause of the section the defendants in error were entitled to maintain their action, after becoming of age, against Ubarri, or his succession, because at the time of the transaction complained of the legal obligation, voluntarily assumed by him, rested upon Ubarri to have protected the interests of the infants against the very wrongs of which complaint is charged in this action.

In this connection it is deemed not inappropriate to call attention to the fact, and it is interesting to note, that on February 16, 1887, Julian Matienzo, the nephew and agent of Ubarri, whom he had chosen as *guardian ad litem* for the children, wrote a letter to the mother of the defendants in error, in which, without explaining to her the exact status of the interests of the infants, informed her that his official connection with the matter as guardian for the children had ceased with the testamentary proceedings (R., 122).

Five days after this letter, to wit, on February 21, 1887 Ubarri filed his complaint (R., 132) against the succession of Lopez, based upon his claim for $24,000.

Title 1, Book II, of the Law of Civil Procedure, promulgated by royal decree of September 25, 1885 (War Dept., Translation, Art. 59), was then in force, and provided as follows:

"Before instituting a declaratory action (such as was brought by Ubarri), a conciliation must be attempted before the competent municipal judge.

"The following are exceptions: * * *

"4. Acts in which minors or incapacited persons are interested, for the free administration of their property."

This exception 4 of Art. 459 was invoked by Ubarri in his complaint to free himself of the Spanish law preliminary requirements of "proceedings to avoid litigation" by resorting to a conciliation "before the competent municipal judge," and he therefore averred in his complaint (R., 134) that—

"Persons under age being interested in this action we have omitted a conciliation proceedings in accordance with exception 4 of Art. 459 of the Law of Civil Procedure."

At this very time Pablo Ubarri, acting under the power of attorney of the mother and natural guardian of defendants in error, was primarily responsible for the protection of the rights and interests of the defendants in error, who were all then infants.

The laws then existing in Porto Rico were amply sufficient to have enabled Pablo Ubarri to have protected the rights and interests of these infants; but he preferred to choose the course best calculated to bankrupt the family and transfer from them to him all of their property in the form of law. The violation of his obligations in this regard, both by commission and omission, was such as to give to the defendants in error a right of action under which their verdict and judgment has been obtained.

IV.

Other Alleged Errors.

This brief is prepared without first receiving the completed brief of counsel for plaintiff in error, and it is not known which of the alleged errors assigned in the court below will be relied on and urged in this court.

Before passing to a discussion of the merits of the case of the defendants in error, as made out in the court below, it is deemed proper to refer to a few of the remaining assignments of error and show that there is nothing in them.

Res Judicata.

Assignment of Error V, Subparagraph (f).

"Because the plaintiffs in establishing their case make a collateral attack upon a judgment of a proper and competent court."

The answer to this alleged error is that the defendants in error did not attack any judgment collaterally, or at all. To question the use or abuse of the processes of a court is not to question the judgment of the court. The former may be inquired into, but the latter may not.

It must be borne in mind that the judicial approval of judicial orders (diligencias judiciales), the proceedings for carrying out a judgment, are not, and cannot be, considered *res adjudicata* (Decision of the Supreme Court of the 3d October, 1883).

Escriche.—By judicial orders (diligencias judiciales) is understood the execution and carrying out of interlocutory orders, or judicial decrees, the serving of the same, etc.

The decision of the Supreme Court of Spain of the 20th December, 1898, held that the decision that set aside an attachment and determining the property that is subject to the levy does not constitute a contradiction to the final judgment wherein is determined the right claimed in the action without fixing the property whereupon the said right was to be made effective.

It is true both in Spanish and in American law that a proceeding may be attacked collaterally for fraud if the person assailed is a beneficiary of the fraud. We do not attack the judgment of the court collaterally or at all. We

do charge absolutely and directly Pablo Ubarri with fraud in manipulating the execution of the orders of the court.

This is also true, because the plaintiffs charge fraud in the execution and the appraisement and sale thereunder. Counsel for defendants in error contend that the attack on the ground of fraud is direct and not collateral; but that even if it were in the nature of a collateral attack, it would be permissible as against the beneficiary of the fraud, since they do not seek to include in the result of their action the purchasers of the propery. In support of this doctrine counsel cites—

Griffith *vs.* Bogert, 59 U. S., 165:

"Finally, there is another view of this case which is conclusive, as regards this and all other objections taken by the counsel to the validity of the sheriff's deed. It is the well-known and established rule of law in Missouri and elsewhere, that a judicial sale and title acquired under the proceedings of a court of competent jurisdiction cannot be questioned collaterally, except in case of fraud, in which the purchaser was a participant."

Assignment of error No. 6 is not objectionable as a stated principle. The instruction asked was given by the court of its own motion, and is found at page 150, folio 252.

The 7th assignment of error is based upon a principle which was directly covered by the instructions given by the court, found on page 150, Transcript of Record.

Assignment of error No. 8 amounts to a request to the court to take the case from the jury, which would, we think, have been manifestly wrong. Certainly the facts established in this case being largely of record, and no question of dispute as to their meaning and purpose, were sufficient to go to the jury, and it would have been an abuse of power upon the part of the court to have taken the cause from the jury.

Assignment of error No. 10 is based upon the refusal of the court to give the following instructions:

"If the jury should find that there was any wrong committed on the part of the officers of the court in using the judicial process, Pablo Ubarri is not responsible therefor, unless the jury find from the evidence that he caused the said officers to commit such acts."

At page 150, Transcript of Record, folio 253, in the instructions to the jury, the court says:

"The wrong must be Ubarri's because a wrong done by court officers as of themselves, without his influence, would not bind these defendants, but the fact that Pablo Ubarri gained advantage from a preponderance of the evidence that he did, from the wrong done, if you believe there were wrongs done, may be taken into consideration in determining, in connection with the other evidence in the case, whether or not such wrong doing was brought about by his wrongful influence, if any."

The foregoing is presented from the instructions given by the court to draw attention to the fact that one assignment of error after another is presented in the assignment of errors that is covered almost in the same language by an instruction given by the court.

V.

The Case of the Defendants in Error.

The cause of action of the defendants in error is based upon section 1068 of the Civil Code of Porto Rico, and is within the purview of the last paragraph of section 38, based on section 36 of the Mortgage Law. Section 1068 is found in Book 4, Title I, chapter 2, of the Civil Code, under the title of "Obligations and Contracts." Counsel for defendants in error will not quote statutes or repeat views or principles which, as far as they have been able so to do, have been exhausted above in reviewing alleged errors that occurred at the trial.

Pablo Ubarri y Capetillo received a power of attorney

from the mother of the defendants in error authorizing him to administer the estate of Jacinto Lopez y Martinez, deceased. He accepted the appointment, and assumed all of the responsibilities in connection with so important an obligation, and, in the eye of the law, the most sacred trust that a man can presume to take upon himself to execute.

Counsel for defendants in error do not deem it necessary to submit either statute or decision to show that Mr. Ubarri, having assumed such an obligation, is liable for its willful violation. We therefore turn to section 1068 of the Civil Code of Porto Rico, which we have already reproduced in this brief, as authority to proceed against the Ubarri succession for any damages that may have arisen because of the violation of Mr. Ubarri's obligation assumed under the power of attorney referred to.

It is equally true, as has been shown, that we might rely upon the last paragraph of section 38 of the Mortgage Law; and we might almost say that, if the allegations of the complaint are true, it would be a waste of the time of the court to even submit the statute conferring a right of action against any person guilty of the conduct charged.

The injury complained of was finally consummated on the 16th day of February, 1889, when Mr. Ubarri purchased the last tract of land formerly owned by the Lopez estate.

The power of Mr. Ubarri to do the wrong of which the defendants in error complain resulted from the power he held over the affairs of the people of the island. We charged, and it is believed proved, that as to the property of the estate of Lopez sold for taxes, the whole matter was entirely under his control, as he was at that time the administrator of the estate, and officially the head of the Diputation Provincial. The duties and the scope of authority of this institution is fully set forth in the testimony of the witnesses, Robert H. Todd and Ramon Falcon, found at pages 183 to 189, inclusive, of the Transcript of Record. The power and influence of Mr. Ubarri personally is also described in the testi-

mony given by Mr. Acuna, beginning at the bottom of page 164, and continuing to the bottom of 168, inclusive, of the Transcript of Record. It will be seen that as vice-president of this institution he was chairman of the committee having in charge the business affairs of the organization; and it is also to be observed that this body was the court of last resort for the consideration of all matters relating to taxation. No ruler ever lived whose word was more absolute or whose command was more implicitly obeyed than was the word or command of Mr. Ubarri. He was given the power by the Spanish government, and, as stated in the testimony of Todd and Falcon, he was relied upon by the home government to make Porto Rico, at least, a peaceful colony. It is true that Mr. Acuna testified that while he did have this great power, and that he exercised it if the occasion required, yet that in dealing with the courts he never brought his influence to bear. This is the testimony of his old attorney and friend, and is contradicted most emphatically by the testimony of Mr. Falcon from information directly in the possession of the witness. Mr. Acuna is now an old man, an accomplished member of the bar, and we have no disposition to criticize or comment upon his testimony; but we do submit that it is hardly within the province of human nature to have the power in a purely administrative government to control all branches of that government, and yet fail to exercise that power, if the emergency required it. The statement of Mr. Falcon in that regard is the more reasonable. Following the cause of action briefly, but in detail, we will show from the record:

(*a*) That after the death of Jacinto Lopez y Martinez, Mr. Ubarri accepted the administration of the estate of the deceased.

(*b*) And that, through his different agents, he advised and directed in a general way the details.

(*c*) That he appointed his judicial agent (solicitor) Tomas Caballero, his substitute attorney in fact, and that

this attorney in fact also represented the minor children and the widow.

(*d*) That he caused to be appointed his nephew and business associate, Julian Matienzo, as the guardian *ad litem* of the minors during the testamentary proceedings.

(*e*) That he appointed his chief counsel, Francisco de P. Acuna, the divider of the estate.

(*f*) That Ubarri selected and appointed the appraisers.

(*g*) That after the testamentary proceedings were finished, and while still in possession and control of the property, he took offense at the widow of Lopez because she asked him for the details of an account which he had presented against the estate.

(*h*) That then, notwithstanding he caused to be set apart property of the value of $63,000, with which to pay an indebtedness of $40,000, the latter sum including his own claim, he disregarded all that he had done and brought suit against the estate, or sucesion of Lopez, and absorbed all of the real estate which, his own appointees had appraised at $123,000, for the payment of his claim of $24,000.

(*i*) That he notified the widow of Lopez that he would do this.

(*j*) That although the wealthiest man in Porto Rico, and the head of the Bureau of Taxation and Collection of Taxes, controlling all municipalities of the island in this regard, he sold a good share of the estate through these very agencies.

(*k*) That at the public auction, so-called, at which the property was sold, whether at a tax sale, or a judicial sale, either he himself, or his recognized agent was always the only bidder.

(*l*) So completely had his prejudice against the widow of Lopez taken possession of him, that through the very attorneys and agents which he had all of the time used in attending to her affairs, and who had so long been addressing her as "my dear Lady," he appeared in his private capacity, as a complaining witness, insisting upon sending

the widow of Lopez to jail for a technical violation of law, which had not deprived him of a dollar.

(*m*) And finally, his conduct was such in all of these transactions, that in place of being trustee and protector of these minors, he violated every instinct of conscience, and every principle of justice, to fraudulently acquire the property for the payment of his alleged debt, not only depriving his beneficiaries of the comfortable estate that should have been theirs, after his debt was paid, but at the same time not allowing any of the creditors of the deceased to obtain a cent.

About five years after the consummation of these transactions, Mr. Ubarri died, and his succession came into possession of his property. It is believed that we have already shown to the court that the wrongs of which we have complained are of such character that Mr. Ubarri would have been liable to the succession of Lopez personally had it been possible for them to have proceeded against him; and we think we have, because of his obligation to the heirs and because of his conduct in the premises, that obligation passed to his succession.

A CREDITOR OF A SUCCESSION IS ONE WHO HAS A RIGHT OR AN ACTION TO ASK ANYTHING, OR AS THE LAW SAYS, "HE WHO SHOULD RECEIVE A DEBT, OR ANY OTHER THING BY REASON OF RIGHT."

Law 10, chapter 33, part 7.

(Escriche: See Creditor.)

THE HEIR REPRESENTS THE PERSON OF THE DECEASED, AND EVEN BOTH MAY BE CONSIDERED THE SELFSAME PERSON. ACCORDING TO RIGHT TO RIGHT, says Law 13, chapter 9, part 7, "THE HEIR IS COUNTED AS ONE PERSON WITH HIM FROM WHOM HE INHERITS."

Escriche, Dictionary (see heir).

REVIEW OF THE FACTS ABOVE SPECIFIED, WITH CITATIONS TO THE TRANSCRIPT, SHOWING THAT THE FRAUD CHARGED WAS THE WORK OF MR. UBARRI, WHO CAUSED THE ABUSE OF THE PROCESSES OF THE COURT FOR THE COLLECTION OF HIS JUDGMENT, AS DISTINGUISHED FROM AN ATTACK UPON THE JUDGMENT OF THE COURT OR THE ACTION OF ANY LEGAL TRIBUNAL.

We desire to make plain the fact that we have not assailed the judgment of the court which gave Mr. Ubarri his judgment, and we wish also to say clearly that we at no time attempted to prevent such an adjudication of the rights of the parties as would deprive the sucesión Ubarri of the benefits of the judgment.

At page 150 of the Transcript will be found the instruction of the court to the jury, stating distinctly that the jury must find that if a wrong was committed in disposing of the Lopez estate, it must have been the wrong of Ubarri and not of the court officers. The language of the court, at folio 253, page 150, is as follows:

"In other words the wrong must have been Ubarri's, because a wrong done by officers, as, and of themselves, without his influence, would not bind these defendants."

To have brought in a verdict for the defendants in error the jury must have found the wrong to have been Ubarri's, and perhaps the principle is well established that this court will not disturb the verdict of a jury as far as the same relates to passing upon the facts involved; but as a matter of further precaution we will present citations to the record as above stated that, in our opinion, left the jury no alternative but to return a verdict in favor of the defendants in error.

(*a*) Ubarri accepted the full control of the estate of the deceased (Record, pages 96, 97, and 98). The document cited is designated as a "deed of substitution of power granted by the Most Excellent Sir Don Pablo Ubarri, in favor of Solicitor (Procurador) Don Tomas Caballero," etc. This

substitution of power recites fully and in due form the direct power given to Mr. Ubarri.

(*b*) Mr. Ubarri, through his different agents, directed in a general way the details of administration (Exhibit "S," page 102, folio 169, Transcript; Exhibit "I," folio 170; Exhibit "F," folio 171; Exhibit "C," folio 174; Exhibit "O," folio 176; Exhibit "N," folio 178).

(*c*) Mr. Ubarri appointed his own attorney, Caballero, his substitute, to assume charge under his direction of the affairs of the estate (Transcript, page 98, reciting the substitution of power and attaching the same to a copy of the power of attorney held by Mr. Ubarri. Exhibit "X," page 115, folio 201, Transcript; Exhibit "W," folio 202, Transcript; Exhibit "V," folio 203, Transcript).

(*d*) He caused to be appointed his nephew and business associate, Julian Matienzo, as guardian *ad litem* of the minors during the testamentary proceedings (Exhibit "V," folio 203), and as showing that Mr. Matienzo, thus appointed, was his business agent, Exhibit "AA" (R., page 122, folio 213). To the same effect Exhibit "BB" (R., folio 214 of the Transcript); that Julian Matienzo was his nephew as well as his business associate, testimony of Ramon Falcon (R., page 132).

(*e*) He appointed his chief counsel, Mr. Acuna, divider of the estate. (That Acuna was leading counsel for Mr. Ubarri, testimony of Mr. Falcon, page 132; testimony of Mr. Acuna, page 166 of the Transcript, folio 283; testamentary proceedings in which Mr. Acuna signs the division of the estate, Transcript, page 93.)

(*f*) Mr. Ubarri selected and appointed the appraiser of the estate (Exhibit "H," page 104, Transcript, folio 175; Exhibit "O," folio 176; Exhibit "C," page 111). That Larrinaga was his personal employee, testimony of Mr. Falcon (R., page 187).

(*g*) Mr. Ubarri took offense at the widow of Lopez over the settlement of an account of his own against the estate

(letter to Mrs. Laborde, page 106, folio 181; Exhibit "Q," folio 182; Exhibit "I," folio 183; letter of Mrs. Laborde, page 119, Transcript, folio 206).

(*h*) He then proceeded to bring suit against the estate, etc., through his solicitor, Caballero, and his attorney, Acuna, all of them still representing the estate (Exhibit "H," beginning at folio 231, page 132 of Transcript, and continuing to top of page 135, followed by the order for attachment, Exhibit "JJ," page 135, Transcript, folio 234; Exhibit "LL," page 141, folio 241, continuing to page 143, folio 244).

(*i*) He notified the widow of Lopez that he would do this, the notice being a covert threat to leave the family penniless (Exhibit "Q," Transcript, page 107, folio 182; Exhibit "I," folio 183).

(*j*) He purchased a large portion of the estate through sales for taxes, the details of which he controlled as vice-president of the "Diputacion Provincial" (as to control over this character of public procedure; testimony of Robert H. Todd, pages 184-185, Transcript; testimony of Ramon Falcon, beginning at page 185 and continued on page 189 to folio —; testimony of Cruze Alegrias, beginning on page 108, Transcript, folio 185, beginning at folio 186 of page 108). The court will observe that it was difficult for the witness to distinguish himself as the mayor of Dorado from the agent of Mr. Ubarri. It is to be remembered that during all of this time, as the dominating factor of the "Diputacion Provincial," Mr. Ubarri (who was buying all of this property through the late mayor, and was also the receiver of the property) was the head of the Tax Collection Bureau of Porto Rico for all municipalities, and that he was at the same time the alleged friend and representative of the family of Lopez. The testimony of this witness, Mr. Cruze, was unquestionably given to the best of his memory, and we are not disposed to criticize it. It is short, and appears from pages 109 and 110 of the Transcript, and from Ex-

hibit "DD," page 128, Transcript, folio 222; Exhibit "EE," folio 223; Exhibit "FF," page 129, Transcript, folio 225; Exhibit "GG," folio 226, and continuing to folio 227 on page 130; Exhibit "HH," folio 227, page 130. It appears that this witness, as mayor, notified Mrs. Laborde repeatedly reference to her taxes, these letters being dated in 1886, as far as they are dated at all, and it further appears that the same witness became a receiver of property attached for taxes (Exhibit "HH," folio 227), and that he bought all of the property for Mr. Ubarri except the personal property. The personal property, he states, was all sold for taxes (page 110, Transcript, folio 188), but that this personal property was bought by Pedro Martarel.

Thus we show that Mr. Ubarri purchased all of the real estate at these tax sales, though still the attorney-in-fact of the estate, as set forth, and officially the head of the Tax Collection bureau, and at a price ridiculously low. This brings us down to—

(*k*) At all auction sales of the lands of Lopez, whether for taxes or under execution, no bidder was ever present except Ubarri. This appears under Exhibit "CC," beginning at the bottom of page 125, the language being: "Don Cruze Allegrias appeared, stating that *he appeared as representative of his Highest Excellency, Sir Don Pablo Ubarri, and in his name he offered to take said lands as a whole for the sum of the taxes due and costs.* Originated in this record, and as it was 3 o'clock P. M., when nobody else appeared to make a better offer, * * * *it was decided to accept his offer in behalf of the above-mentioned Ubarri.*" And so the statement continues on pages 123, 124, 125, 126, and 127 of the Transcript, showing that altogether there was adjudged to Mr. Ubarri a very large acreage of land for taxes; although we were unable to learn the exact quantity, he was certainly making good his "fear" that the children of Lopez would be left without support.

Exhibit "LL," page 142, under the document entitled, "Document of Auction Sale," and in paragraph I of said

document, it is announced that the last important sale was a public auction, conducted as follows: "The auction opened, and the plaintiff Don Pablo Ubarri was the only person present," and it is needless to add that the land was adjudged to Mr. Ubarri.

(*l*) As further evidence of his purpose in the premises, he appeared through his same attorney, Caballero, while he was still the attorney in fact, and as private prosecutor (an office then known to the law of Porto Rico), prosecuted privately, before the Supreme Court of Porto Rico, the widow of Lopez, with the result that the Supreme Court reversed the lower court which had acquitted Mrs. Laborde of the trifling offense stated in the charge, and caused the decision of the lower court to be reversed and the widow condemned to prison, or the payment of a fine which, as far as she was personally concerned, made the imprisonment a certainty (Exhibit "MM," beginning at page 143, Transcript, folio 244, and continuing to page 146, folio 248).

THE ACCEPTANCE OF THE ESTATE WITH OR WITHOUT INVENTORY IS OF NO IMPORTANCE IN THIS CASE; BUT IF IMPORTANT TO PLAINTIFF IN ERROR HE MAY AT ANY TIME AVAIL HIMSELF OF ANY BENEFIT ACCRUING TO HIM UNDER THE LAW.

The court instructed the jury, bottom of page 149, Transcript, as follows:

"But the court instructs you, as it has presumed, because defendants have not shown to the contrary, that these defendant heirs took the estate of their father, the said Pablo Ubarri y Capetillo, without benefit of inventory, etc."

The plaintiff in error excepted to this instruction, and it was urged below that we should have alleged that plaintiff in error inherited without benefit of inventory if we sought to collect against him as a member of the succession. The

court held that this was a matter of defense. As is shown by the record, Transcript, pages 21-22 and 23, the same being the petition for an attachment in this cause, the defendants in error describe the property out of which they expected to collect any damages recovered. The description of the property, as it appears in the record, is shown by the petition, and, of course, we knew from that record that we were dealing with the property of the succession Ubarri as distinguished from the private property of the members of the succession. There never has been an offer to attach, or levy upon any of the property of any member of the succession, not inherited and belonging to the estate of the succession; therefore, whether the heirs of Pablo Ubarri y Capetillo inherited with or without benefit of inventory, did not concern us; neither could it concern the plaintiff in error, but there are two reasons, independent altogether of these conditions, that impress us with the belief that the court is right in its ruling. They are: (1) We were not called upon to prove a negative condition. If we obtained a judgment and failed to collect it from the succession, it was our misfortune. (2) If the plaintiff in error inherited with the benefit of inventory, and we attempted to subject his property, or any interest he might have acquired, independent of that which he received as a member of the succession, then, by invoking the fact that he inherited with benefit of inventory, he would stop us from levying upon any property acquired by him aside from his inheritance. Thus the defense was as simple as an appeal to an exemption statute; and the fact lay within the knowledge of the plaintiff in error.

The Helplessness of Defendants in Error.

July 3, 1885, Mr. Ubarri concluded a letter to the widow of Lopez, with these words:

"Be patient, I will not abandon you and your children.

"Your friend, etc.,

"P. Ubarri."

Yet, after that declaration, the "friend" who signed the letter appeared as a private prosecutor, demanding that she to whom he had addressed this consoling paragraph be sent to jail. The paragraph is found at Exhibit "P" for plaintiffs (page 103, Transcript, folio 173). Then, repeatedly he called upon the widow for money. January 20, 1886, when the land had been attached for taxes, and when Mr. Ubarri knew the widow was without a dollar, he called upon her for money; he said that nothing could be done without money Exhibit "L," page 105, transcript, folio 179. Again at Exhibit "G," page 112, folio 192, the widow is advised as follows:

"I repeat to you that you know it is on account of lack of money;" referring to certain proceedings which the widow had asked to have expedited. At the same time he tells her that it is necessary that the mayor order the attachment upon her property.

We have already cited to the court the documents in the record, which show the amount of taxes due from the estate, and we have also shown that the estate possessed a large amount of personal property in horses and cattle; and we have cited the evidence to show that all of this stock, valued at some $35,000, as shown by the testimony of Jacinto Lopez, Jr., and Cruz Allegrias, had been disposed of for taxes; but it appears that in every instance the property was permitted to be sold for the taxes upon the article, or parcel itself. For instance, a certain number of cattle were assessed at a certain price, and a certain tax collected upon the number stated. These, according to the testimony of Mayor Allegrias, were delivered over to whomsoever paid the taxes levied upon them; and the $35,000 worth of stock was frittered away for nothing; and, under these conditions, and with the land under attachment, Ubarri was calling upon the widow for money which he knew she did not have.

And finally, when she did attempt to sell a few pieces of timber, with which to buy the necessities of life, supposing that the attachment had been released, and the prosecuting attorney and the trial judge were glad to discharge the

widow from custody and the indictment brought against her, we find the head of this succession, who had but just declared that he would never abandon the widow and children of his old friend, demand that she be sent to jail because she had asked him to give her the details of an account he claimed against the estate.

As to the Value of Personal Property.

At page 108 of the Transcript of Record, folio 185, it will be noted that the witness, Pedro Lopez, testified as to the value of the estate, and that the witness, Ferdinand Cestera, also testified as to the number of cattle owned by Jacinto Lopez y Martinez at the time of his death. Not a line of the testimony of these witnesses appears in the record. Indeed, there was apparently no attempt on the part of the plaintiff in error to present a bill of exceptions which would cover questions of value, and it is assumed that this branch of the case is practically abandoned. Defective as the record is, it is believed that there is enough of the evidence adduced before the jury below to support the verdict.

Change of Sovereignty.

Nor did the change of sovereignty affect the right of the defendants, provided they were within the terms of the law as it was prior to the American occupation, at the time of the American occupation, and as it has ever since been. The change of sovereignty did not act as a prescription statute.

We stipulated into the record a very lengthy opinion, delivered by the District Judge in passing upon the citizenship of Rufino Ubarri. We were glad enough to meet the wish of counsel on the other side in bringing this opinion into the record, although we are now unable to see, nor were we able at any time to see, that the determination of the citizenship of Rufino Ubarri made any difference to us. As appears in this opinion of the court, at page 18 of the Transcript, folio 29, we by stipulation extended the time of Rufino

Ubarri in which to answer; again, at page 46, folio 79, we stipulated further time in which Rufino Ubarri might answer; again, at folio 85, by stipulation, we extended the time in which Rufino Ubarri might answer; again, at folio 96, we by stipulation extended the time in which Rufino Ubarri might answer.

Thus, covering a period of more than six months, we at four different times stipulated extensions for Rufino Ubarri, and then, it having been nearly a year and a half since the suit was filed, and more than six months that we had been in active controversies over the various legal questions involved, Rufino Ubarri discovered that he was not a Spaniard at all, but a Porto Rican, and as such beyond the jurisdiction of the court. Counsel for defendants in error were thoroughly convinced then, as now, that it made no difference whether Rufino Ubarri stayed in court or whether he did not. One member of the succession had answered, and was represented through able counsel to contest this claim against the estate; and for the same reason that we have presented to this honorable court, we believed it was immaterial whether other members of the succession were there or not. We had summoned them, and it was the duty of plaintiff in error to notify his associate heirs, and, as appears from the record, they were all in court; but, provided some member remained and tested the question involved, we were indifferent as to the rest. This was because we did not rely upon the private property of any individual member of the succession for the payment of any judgment we might recover, for the reason that there was an abundance of property belonging to the succession in Porto Rico to meet the requirements of any execution we could possibly obtain. Therefore, while we appear in this long opinion as having submitted the question of Rufino Ubarri's citizenship, the fact is that our appearance was formal, and we did not participate in the hearing. We were not only indifferent, but we shared somewhat with some of the Spaniards, who came

into court to testify, in their disgust of so fruitless an attempt to evade a legal responsibility.

Laches, of course, was not involved in this a law case. Had we considered such a question as at all important, then we might have brought here omitted facts of the record, of such a character as would have excused delay in a court of equity, but the truth is that in the court below, it was not regarded as a point of any consequence.

We are not attempting to review the acts of a Spanish court in Porto Rico. We are not questioning the judgment of such a court. The wrongs we complain of were committed at a certain time against the minors who were entitled to inherit something from their father. By the wrongful acts of the man who was entrusted with the guardianship of their rights, they were deprived of a competency, and a family of wealth and high social standing was turned upon the world penniless. No change of sovereignty righted that wrong. The Spanish law before the change is the Spanish law of today. It was the law in Porto Rico then, it is the law in Porto Rico now. This law we have invoked; this is the law upon which this verdict rests, and although justice has been slow in coming to the family of Jacinto Lopez, yet, its coming was never more absolutely based upon the right of a petitioner at the bar of any court of justice in any State. While the change of sovereignty has brought no change in the principles of the law involved, yet, if such a change has brought to the people courts that measure justice, and administer it, free from the shadow of executive powers, then that people is to be congratulated, and the last place where a criticism of such a victory should find a resting place is, in our humble opinion, the Supreme Court of the United States.

Respectfully submitted,

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GEORGE H. LAMAR,
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Supreme Court, U. S.
FILED.
APR 19 1909
JAMES H. McKENNEY,
Clerk.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 137.

BUENAVENTURA UBARRI Y YRAMATEGUI,
PLAINTIFF IN ERROR,

v.

JACINTO LORENZO LOPEZ LABORDE ET AL.,
DEFENDANTS IN ERROR.

REPLY BRIEF FOR DEFENDANTS IN ERROR.

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REPLY BRIEF FOR DEFENDANTS IN ERROR.

The brief of plaintiff in error, first filed on the day this case was reached and the oral argument of his counsel, and his subsequent brief, raise certain points to which a brief reply is deemed not inappropriate.

I.

ORIGINAL DEFENDANT JOSÉ.

The contention in the last brief of counsel for plaintiff in error that "on the application of counsel for plaintiffs below leave was granted to *dismiss* the action as to José, but it does not appear from the record that the permission was ever availed of," is now urged by plaintiff in error, notwith-

standing the fact that the record shows that the order (R., 43) involved the "*striking out* the name of José Maria Ubarri as a party defendant to this suit," and that from the date of the order to the conclusion of the proceedings in the court below the plaintiff in error, as well as the defendants in error and the court, recognized as a fact that said name of said defendant had been stricken out, as is more fully pointed out on pages 9 and 10 of the former brief of counsel for defendants in error; and this fact is so recognized and asserted in *assignment of error 3 (c), as specified in this court* on page 9 of the former brief of counsel for plaintiff in error, and they are estopped from asserting that José is a party defendant to this action. If he were, the judgment in the court below, having been entered against the plaintiff in error, "of the sucesion of Pablo Ubarri y Capetillo," the writ of error would be subject to dismissal for the reason that the record shows that there was no summons in severance. The order of the court below (R., 43) for striking out the name of a defendant was specifically authorized by section 140 of the Code of Civil Procedure for Porto Rico of 1904. Counsel for defendants in the court below sought and the court allowed his motion to strike out the name of this defendant, and if the record has been defectively made up by plaintiff in error in this regard, or even if the clerk, by inadvertence, failed to strike out the name from the pleading, which is denied, it was an error of a clerical character which can be corrected at any time.

Hoffman *vs.* Keeton *et al.* (132 California, 195).

In this case one of the defendants to an ejectment suit was given the fictitious name of John Doe.

"But by an order made April 13, 1897, reciting that the true name of John Doe (was) in fact B. Shinsheimer, it was directed that the latter name be inserted in the complaint in lieu of the former. The complaint, it seems, was not actually amended. * * * The points made for reversal are: (1) That there is nothing in the complaint to show that the ap-

pellant (Shinsheimer) was a party to the action, and consequently that as to him the judgment is in fact void."

In disposing of this first point, the Supreme Court of California, among other things, said:

"It would have been more regular to have made the amendment in the complaint, but the error, if any, is immaterial (Code of Civil Procedure, section 475), and, being merely clerical, may be corrected by the court below at any time."

II.

Parties Plaintiff.

Counsel for plaintiff in error also seek to raise in this court, for the first time in a reply brief, without any assignment of error, pleading or exception of any character on which to base the same, the suggestion that there was misjoinder of parties plaintiff or incapacity on the part of the plaintiffs in the court below to sue without joining with them the balance of the children of their father, two of them, children by his first wife, Garcia, namely, Trinidad and Antonio Lopez Garcia. It is true that counsel mention Consuelo Lopez Laborde, daughter of Lopez, by his second wife, Concepcion Laborde. Counsel overlook the fact that all of the living children by the second wife were joined as plaintiffs in the court below and that the deceased daughter, Consuelo, is represented in the action by her daughter, Maria Concepcion Graxiana Lopez who sues by her *grandmother*, Concepcion Laborde, the second wife and widow of Lopez.

Had the question of alleged misjoinder of parties plaintiff been raised in the court below, it could readily have been shown that Trinidad and Antonio Lopez *Garcia*, the children by the first wife of Lopez, *Garcia*, were both of age, as shown by the power of attorney (R., 96), and were amicably dealt with by Ubarri, as indicated by the record, page 137, where it appears that the judgment in favor of Ubarri expressly

relieved said Trinidad and Antonio Lopez Garcia, from the imposition of costs.

The provisions of the Code of Civil Procedure were referred to or quoted on pages 7 and 8 of our former brief, and show that all questions of this character should have been raised, if at all, in the court below by demurrer, even if well-founded. Besides the Code of Civil Procedure of 1904 for Porto Rico provides:

"SECTION 68. All persons holding a common interest in property, or any number less than all, may jointly or severally commerce or defend any civil action or proceeding for the enforcement or protection of the rights of such party or parties."

But assuming for the sake of argument, and not otherwise, that such a position would have been well founded at the proper stage of the proceedings in the court below, it is an elementary proposition in this court that misjoinder of parties cannot be first raised in this court.

Wheeler *v.* Sedgwick, 94 U. S., 1.
Hayes *v.* Pratt, 147 U. S., 557, 570.

Had the question been raised in the court below, however, there was no misjoinder in the omission of the names of the two adult children of Lopez by his first wife. The defendants in error, and each of them, suffered at the hands of Pablo Ubarri by being deprived by him, while their attorney in fact, of the property specifically described in the complaint, as having been awarded to them, over and above an amount specifically set apart for the payment of the individual claim of Ubarri and all other creditors.

Ubarri, under the power of attorney, approved by the court and accepted by him, as hereinafter shown, had full authority, through "conciliation proceedings" and otherwise to protect them against loss in the collection of his individual claim. Disregarding his obligations and fiduciary relations,

he pursued a course whereby the property of these infants was acquired by him to their loss. To say that because he pursued a course whereby the adult children of the first wife of Lopez were not aggrieved to the extent of causing them to proceed, or join in proceedings, against Ubarri, deprived these infant children of their rights is untenable.

The verdict and judgment in the court below was entered in favor of the defendants in error and was presumably based upon the loss which they sustained, and, therefore, upon their substantial rights in the premises.

The plaintiff in error did not bring up that part of the testimony which had relation to values, and his counsel in open court agreed that questions of value should be eliminated from consideration by this court, agreeably to which they omitted from the assignment of errors in their brief those errors assigned in the court below bearing on the subject of values. And the presumption is that the loss sustained by the defendants in error aggregated the amount of the verdict and judgment in their favor, and the same will not be disturbed by this court.

It is believed that the complaint sufficiently set up the cause of action; but, if the same, or any of the pleadings, contain any defects of a formal character, they would not be permitted to deprive the defendants of their substantial rights, as sustained before the jury in this cause.

Being an action at law, the Federal courts are bound by the provisions of the Code of Civil Procedure of 1904 in this regard, which provides:

"SECTION 142. The court must, in every state of an action, disregard any error or defect in the pleadings or proceedings which does not affect the substantial rights of the parties, and no judgment shall be reversed or affected by reason of such error or defect."

III.

Form of Judgment and Parties Defendant.

Counsel for plaintiff in error also contend that the judgment—entered (R., 65), in favor "Jacinto Lorenzo Lopez Laborde, Maria Consolación Lopez Laborde, Manuel Demetrio Lopez Laborde, Enrique Lopez Laborde, and Maria Concepcion Graxiana Lopez, and Francisca Louisa Lopez Laborde, all of the plaintiffs in the court below, against the plaintiff in error, "Buenaventura Ubarri y Yramategui of the succession of Pablo Ubarri y Capatillo"—was against the plaintiff in error personally and that the words "of the succession of Pablo Ubarri," etc., are mere words of description.

The complaint concludes as follows (R., 40-41), to wit:

"Wherefore plaintiffs *demand judgment against the said succession of Pablo Ubarri* for the sum of," etc.

It is conceded in the supplemental brief of counsel for plaintiff in error that "the action was against the sucesion" of Pablo Ubarri. The whole theory of the charge of the court below was that the action was maintainable against the succession, and that the court acquired jurisdiction over it by having one member thereof, the plaintiff in error, as party defendant. The judgment was intended to be against the succession. If defective at all the same is defective in form only, which form can be modified in the court below, if need be, so as to conform to the theory of the action and the proceedings had thereunder by a proper order.

Borer *v.* Chapman, 119 U. S., 587, 593-594.
Bemmerly *et al. v.* Woodward, 124 Calif., 568, 576.
Hayes *v.* Pratt, 147 U. S., 557, 570-571.
Cyc., vol. 23, p. 871.

It is believed, however, that the judgment as entered is *in solido,* and that it was so regarded by plaintiff in error in the court below; also that the Spanish law applicable to the case, as discussed in our prior brief, supplies ample authority for the judgment in the form in which the same was entered.

This whole subject of the judgment and "indispensable parties" is fully treated in Part II of our original brief, pages 9 to 28 inclusive, to which attention is respectfully invited, and especially to page 13 thereof, where the distinction is pointed out between the laws of Spain and Porto Rico and the law of Italy, Chile, and France.

It is presumed that the laws of Louisiana on the subject, derivable as they are from the laws of France, are different from the laws of Porto Rico, as indicated on page 13 of our original brief.

IV.

Limitations.

Counsel for plaintiff in error urge in this court:

(1) That, under certain Spanish authorities, the burden of proof, in meeting the plea of limitations, was on the defendants in error.

(2) That certain statutes of limitation apply other than those mentioned or covered in the plea of prescription made by answer in the court below.

(3) That the amendment to the first paragraph of the complaint (R., 63) was improperly allowed.

(4) That the one-year statute applies.

(1)

BURDEN OF PROOF.

The contention on this point is untenable, even if supported by the old Spanish practice, which is denied, for the reason that the procedure in the court below was governed by the Code of Civil Procedure of Porto Rico, approved March 10, 1904, which went in force July 1, 1904. This code was based upon and compiled from the Code of Civil Procedure of California, itself once a Spanish colony, the pertinent provisions of which are identical with those of the California Code. Section 128 of the Porto Rico Code of Procedure, relating to the plea of limitations and proof in support thereof, is identical with section 458 of the California Code, and section 132 of the former, defining what is *"deemed controverted,"* is identical with section 462 of the latter. These statutes have been repeatedly construed by the Supreme Court of California, as placing the burden of proof on the one who pleads the statute to sustain the plea by proof, including such as may be necessary to meet all possible exceptions therefrom.

Wright *v.* Ward (65 Cal., 525).
Dugal *v.* Schulenberg (101 Cal., 154, 157).
Williams *v.* Bergin (116 Cal., 56, 59, 62).
Pierce *v.* Southern Pacific Co. (120 Cal., 161-2).

In the last-mentioned case, section 458 and section 462, corresponding to sections 128 and 132 of the Porto Rico Code of Civil Procedure, were specifically referred to and construed. The court said:

"The contention of the appellant is that the evidence showed, without contradiction, that more than two years (limitation period) elapsed between the negligence complained of and the bringing of the suit, and hence that the finding of the court against defendant's plea of the statute is

contrary to the evidence. We think this contention cannot be maintained.

"Under our Code of Civil Procedure, section 458, the statute of limitations is sufficiently pleaded by alleging the bar and referring to the section and subdivision thereof (if so divided) relied upon. But the section continues, 'if such allegation be controverted, the party pleading must establish, on the trial, the facts showing that the cause of action is so barred.' The allegations of the answer are to be *deemed controverted* (Code Civ. Pro., sec. 462). *It therefore devolved upon the defendant to establish the facts necessary to support the plea.* (Italics supplied.)

"The complaint avers and the answer admits that the defendant 'is a corporation, organized under the laws of the State of Kentucky, and engaged in the business of operating a railroad as a common carrier of freight and passengers in the State of California and elsewhere, and was so engaged in the said business during all the time hereinafter mentioned.' "

The court then referred to a statute of California requiring all non-resident corporations to have a resident agent.

"The second section of that act provides that failure to comply with such requirement shall preclude such corporation from 'the benefit of the statutes of this State, limiting the time for the commencement of civil actions.'

"It being admitted that defendant was a corporation organized under the laws of another State, compliance with the foregoing statute became a necessary fact to be proven as a predicate to its right to avail itself of the benefit of the statute of limitations. This it failed to do, and hence the court did not err in its findings against its defense of the statute of limitations."

In the case at bar the averments of the first and second paragraphs of the complaint (R., 27), admitted by paragraph one of the answer of the plaintiff in error thereto (R., 52), showed absences of members of the succession of Pablo Ubarri, that the plaintiff in error had "always resided in Spain" and also that all of the defendants in error (plain-

tiffs to the action) were infants when the cause of action accrued, and one of them was an infant at the time the suit was filed.

Under the above authorities, it was clearly incumbent upon the plaintiff in error to affirmatively show that the interruptions in the running of the statutes pleaded, by reason of the provisions of sections 39 and 40 of the Code Civil of Procedure of Porto Rico, were insufficient to apply the bar, at least of the fifteen-year statute. It was also incumbent on plaintiff in error to have affirmatively shown when the aggrieved persons, and each of them, had knowledge of the cause of action, if the one-year statute was to be relied on.

Instead of this, the plaintiff in error introduced no evidence whatsoever in support of his plea.

The recitations preceding the amendment (R., 63) show that the whole subject of limitations was submitted to the court in chambers. There was evidently no dispute in regard to the facts with respect to the absences and infancy; and, therefore, the plaintiff in error either relied entirely upon the lapse of time, or abandoned his plea. The court, in his charge to the jury (R., 150), said: "There is no question of any statute of limitations for you to consider, gentlemen. The court has settled all those matters on the record." To this part of the charge there was no specific exception by the plaintiff in error. If he relied upon the mere lapse of time in the court below, in the face of the exceptions contained in sections 39 and 40 of the Code of Civil Procedure of 1904 (which went into force July 1, 1904), and amended the Code of 1889 (which went in force January 1, 1890), before the expiration of fifteen years, plaintiff in error cannot shift his position in this court.

Royal Insurance Co. *v.* Miller, 199 U. S., 353.

(2)

RELIANCE ON STATUTES NOT PLEADED.

The plea of limitations in the answer of plaintiff in error (R., 55) was confined to sections 1862 and 1865 and subdivision 2 of section 1869 of the Civil Code of Porto Rico.

Counsel for plaintiff in error urge before this court that certain other statutes of limitations, not pleaded in the court below, might apply. While it is not believed that their contention could have been sustained if these statutes had also been pleaded, it is certain that plaintiff in error cannot now avail himself of any such statutes, in view of the requirements of section 128 of the Code of Civil Procedure, under which the same must have been specifically pleaded in the court below at the first opportunity. This identical statute, known as section 458 of the California Code, has been repeatedly construed, in harmony with this contention, by the Supreme Court of California.

Manning *v.* Dallas (73 Cal., 420).
Bank *v.* Wickersham (99 Cal., 655).
Churchell *v.* Louie (135 Cal., 608, 610).

(3)

AMENDMENT.

The amendment to paragraph one of the amended complaint (R., 63) simply made more specific what had theretofore been averred in the first paragraph of the amended complaint (R., 27) and admitted by the first paragraph of the answer of the plaintiff in error thereto (R., 52).

Under the California decisions, it was clearly within the discretion of the court to have allowed the amendment.

Wills *v.* Law *et al.* (38 Pac., 523).
Smith *v.* Bellett *et al.* (15 Cal., 23).
Hawthorne *v.* Siegel (88 Cal., 159, 168).

No exception was taken by plaintiff in error to the action of the court in allowing the same, and no assignment of error is based thereon. On the contrary, counsel for plaintiff in error, promptly upon the allowance of the filing of the amendment, announced, "ready for trial" (R., 64).

In the case of Smith *v.* Bellett (*supra*) the court holds, in effect, that failure to answer or demur to an amendment, is equivalent to consent.

(4)

ONE-YEAR STATUTE DOES NOT APPLY.

Counsel for plaintiff in error cites certain Louisiana cases on page 24 of their original brief and on page 5 of their supplemental brief in support of their contention that the one-year statute pleaded in this cause applies.

Aside from the marked differences in the scope of the Louisiana and Porto Rico statutes in question, it is suggested that the cases cited are based upon essentially different state of facts from those on which the right of action accrued in the case at bar.

In none of the cases cited was there existing the fiduciary or trust relation which obtained in this case.

At the time the cause of action accrued, Pablo Ubarri held a power of attorney in fact, voluntarily accepted and never revoked, given by the mother of the defendants in error, "in her own right and *representation of her minor children*" (the defendants in error), which was confirmed by the court and which reads, in part as follows (R., 97):

"That in the representation in which they appear they grant and give such an ample power, entire and efficacious as it may be required by law and may be necessary in favor of the Most Excellent Sir Don Pablo Ubarri a proprietor of the vicinity of this capital so that representing his person, action, and rights, and in accordance with the instructions which they have communicated to him, and will communicate, *he will represent them in all the matters, actions and*

suits in which they are interested, suing, defending, which they may have pending and which may occur hereafter, before any court of justice. So that he may establish and follow in all of its course the intestate proceeding of the deceased husband of the former, father of the second and of the wife of the third. Don Jacinto Lopez, who died in Dorado, without leaving a will, six months ago, formalizing the required inventories, valuations, partitions and adjudication of the undivided estate among the legitimate heirs, *taking cognizance of all their incidents and differences that may occur, until he may obtain the approval of all protocolization and material delivery of the property adjudicated, establishing and as-u-ar-ing the oppositions that may be made.* And collecting and receiving the amounts that such capacity may be owed, according with the documents, accounts and papers that may be presented; *so that if it became necessary he may appear in Court in verbal actions, conciliation proceedings, of ejectment, bankruptcy, of voluntary jurisdiction, contentions, and any other, settling differences that may occur or submitting the questions to the decisions of refferi-es, friendly compounders, with the penalties and fines that they may agree, so that he may establish challenges, appeals of all sorts, following one and the other through all of their proceedings and desisting whenever the interests of grantors may be benefited thereby: So that he may establish protests, mediations, injunctions, and to interpose all kinds of appeals and actions that he will follow throughout in accordance with the corresponding law: So that he may record the realty before the registrar of property, and same lacking registration, he may establish the corresponding possessory informations, subscribing the instrument and proceedings as well as the deed of any kind that he may have to grant, with certificate of delivery, or renunciation of the laws in the case, and for everything relating and whatever is annexed, accessory, incidental or depending from the mentioned intestate proceeding from Don Jacinto Lope[illegible]ey confer his power with free, frank, and general administration, faculty to institute proceedings, take oath, substitute, elect, to revoke substitutes and to reelect anew exonerating them in due form.*—To have as firm, to rectify, and approve everything that may be made with relation to the present and may be done by the power of attorney and substitutes in its case,

the persons appearing oblige themselves in accordance with the law." (Italics supplied.)

The validity of the power of attorney has not been questioned by the plaintiff in error. If it were, under the head of the "Rights and obligations of husband and wife," arts. 56 to 66, inclusive, of the Code of 1889, and chapter third of said Code of 1889, entitled "Effect of parental authority with regard to the property of children," articles 159 to 166, it will readily be seen that, as the natural guardian of the children, their mother had no small degree of authority, and the ratification of the power by the court and the acceptance of the obligations thereunder by Ubarri established, beyond question, a fiduciary and *quasi* trust relationship between Ubarri and the defendants in error, pertinent to a consideration of the character of action here involved.

That a breach of these obligations, as charged and proven to the satisfaction of the jury in the court below, sounds in contract and not in tort, would seem to be a proposition too plain for argument.

As to the differences, if any, between the laws of Louisiana and of Porto Rico on this subject, we are frank to say we do not know, and the time within which this brief must be filed is insufficient to investigate. We do know that there are differences between the laws of Porto Rico and of Louisiana in the language of the statutes of limitations. We have contended, in our former brief, that the action falls within the provisions of section 1068, Civil Code of Porto Rico (section 1101, old 1889 Code), and also the last clause of article 38 of the Mortgage Law—both copied at page 34 of our former brief.

We submit that the civil law, as applied to Porto Rico, does not treat such grave violations of obligation and duty as a mere tort, or that such actions are or ever were governed by so short a period of limitation as one year.

Whatever the differences in the forms of statutes and basic principles obtaining in Louisiana and Porto Rico, we

submit, further, that the law of Louisiana, as construed by the Supreme Court of that State, does not do so, either.

In the case of The Parish Board of School Directors *v.* The City of Shreveport (47 An., page 1310), the court held that the funds were held in trust and that a breach of trust sounded in contract and not in tort, and would not be barred by the one-year statute.

In the case of Heirs of Burney *v.* Ludeling *et als.* (47 Louisiana Ann., pp. 73, 92, 93), the court held (syllabus) that:

"The obligations of the persons who have acquired minor's property *without the forms of law to restore the thing,* the fruits and the revenues result not from an offense, or *quasi* offense, but from a *quasi* contract."

"Where the administrator by private sale disposed of succession property in which minors are interested, and administrative sale afterwards provoked in order to confirm the title of the purchaser at private sale is null and void, as it is not a *bona fide* proceeding provoked to pay the debts of a succession. Such a sale can only have the effect of destroying competition among the bidders for succession property."

On pages 91-92 the court said:

"We think plaintiffs' case comes under the ruling of Nouret *v.* Ballingir (15 An., 293). It is true that he does not ask for judgment in the alternative. *A part of the property had been sold. It was useless to sue for the specific property, which the records of the parish informed them had been sold.* * * *

"It would most assuredly be an anomalous position to permit a suit for annulment of a sale (*as in Art.* 36 *of the Mortgage Law*), and to deny the party plaintiff the right to recover its value, if not in possession of the defendant. And it would be more so to say that the action to annul is not prescribed, but that the plaintiff cannot recover the price of the property disposed of because the action is prescribed. They go together (*and this is so provided by last paragraph of Article* 38 *of the Mortgage Law of Porto Rico*). If the action to annul is prescribed the price cannot be recovered,

and if the plaintiff's demand for the price is prescribed the action of nullity is useless. Therefore, in the action to annul, coupled with a demand for the price of the thing alienated, we do not think that the restitution demanded has any element of damages in it, and is not covered by the prescription of one year.

"If the sale of the property is null and void as claimed by the plaintiffs, from the moment that the defendants, who as possessor in bad faith according to the plaintiff's allegations, went into possession they held and possessed it for the benefit of the heirs, and must account to them for it and its revenues, *and if not in their possession, for the price received for it* (Badello and Chauvin *v.* Tio, 7 An., 487; Badillo *et al. v.* Tio, 6 An., 129; Heirs of Wood *v.* Nicholls, 31 An., 745).

"The obligation of the defendant to restore the thing, the fruits and revenues, *or the price in case they have alienated it*, results not from an offense or *quasi* offense, but from a *quasi* contract (Civil Code, Arts. 2293, 2294)." (Italics and references to mortgage law in parentheses supplied.)

From this it is clear that, even under the decisions of the Supreme Court of Louisiana, on which plaintiff in error relies, the cause of action involved in this case sounds in contract and not in tort, as his counsel contend.

The one-year statute, on which counsel for plaintiff in error must rely, relating as it does to demands for "Civil Liability for grave *insults* or *calumnies*," and "fault or negligence," clearly does not apply to the action in the case at bar.

Conclusion.

In conclusion, it is suggested that the verdict of the jury and judgment in the court below is sought to be avoided by the plaintiff in error largely, if not wholly, on purely technical grounds. The omission from the record of the testimony of three witnesses as to values and the abandonment of all assignment of errors on the subject of values is a practical admission that the losses sustained by the defendants

in error were equal to the amount of the verdict. At any rate, the court is not called on to review the findings of the jury in this regard.

The main defense is that of limitations, a defense which always appeals least strongly to a court of justice, and especially when raised in opposition to relief sought against the property of a trustee at the hands of persons who were infants when the action accrued. It has been shown that this plea is untenable both in fact and in law.

It is urged by plaintiff in error that it is a hardship upon him to defend the succession of his father alone. We submit that we have complied with the Spanish law applicable to the case, and that the theory of that law is in consonance with justice, and the same law provides means whereby he can exact contribution by his co-heirs.

Plaintiff in error claims the benefit of a contrary system. Whatever the laws of other countries may be, such is not the law of Spain. We may not question whether the Spanish system is just or unjust; but we submit with perfect confidence that it is the law; and, furthermore, if we were obliged to rely upon the fact that it is just in its provision, our confidence would not at all be shaken in the result.

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